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ECCLESIASTICAL DISCIPLINE
IN THE
CHURCH OF SCOTLAND
1690 - 1730

A SUMMARY

R.M.Graham
Faculty of Divinity

University of Glasgow
April, 1964

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ECCLESIASTICAL DISCIPLINE
IN THE
CHURCH OF SCOTLAND
1690 - 1730

A Thesis Presented to the Faculty
Of Divinity for the Degree of Ph.D.
in the University of Glasgow.
April, 1964

by

Ralph M. Graham, B.A., B.D.

To my WIFE
who thought it was all worthwhile,
and to the ministers and members of
WOODLANDS-THORNHIEBANK PARISH CHURCH
KILMARNOCK PARISH CHURCH
DRUMCHAPEL OLD PARISH CHURCH
who have made my stay in Scotland
such a pleasure.

PREFACE

The subject of church discipline is very much to the fore today. In this age where one is constantly reading of discussions regarding church unity, and where the stewardship movement is re-investigating the responsibilities of the individual church member, the study of discipline has much to offer the student of church history.

The following paper seeks to investigate the state of discipline in the church in Scotland in the years from 1690 to 1730. This period offers a unique opportunity to study the churches in Scotland as a whole. The struggle over episcopacy was ended and the movement toward separation had not as yet begun. We are particularly interested in the common type of disciplinary problem which was the concern of the local judicatory as well as of the General Assembly.

It was in 1707 that a Form of Process was adopted that was to guide the course of discipline in the Church of Scotland for over two hundred years. We have chosen it as our guide and outline for a study of the period. In order to limit the subject to reasonable proportions we have omitted any discussions of the problems of heresy and schism. These very vexing problems require individual analyses.

The principal resources for this study have been a collection of manuscripts made available in the National Register Office. A number of judicatory minutes including all the General Assembly and Commission records and in addition ten synods, twenty-five presbyteries, and fifty kirk-sessions were used. In all this represents over 7000 disciplinary cases.

In the appendices in the rear of the paper is a complete copy of the Form of Process so that all references to it can easily be checked. There is also a chart of statistics and it is on this that all the figures given in the paper are based.

My personal interest in Scottish History was nurtured on my Grandfather's knee. An "exile" in America, he loved to talk about the "old country" and his library of Scottish books was always open to me. I was taught at an early age to be proud of my Scots heritage and have welcomed this opportunity to experience its roots.

I would be remiss if I did not take this opportunity to thank all those who have been of help to me. I owe a special word of thanks to Dr. Stewart Meehie. His scholarship, accessibility and friendly criticisms have been a constant aid. My wife, Jeannie, must also be thanked for all her assistance. Editing, proof reading, and typing involving many hours of labour were always cheerfully and readily carried out. It remains for me to thank the staff of the National Register Office, Trinity College Library,

Glasgow University Library, and Mitchell Library for their
kind help.

R.B.G.

Glasgow
April 1964

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INTRODUCTION

The years from 1690 to 1730 were a time of comparative stability for the Church of Scotland. The long struggle over episcopacy was at an end. In 1690 the Act of Supremacy was repealed and Presbyterianism was established. That is, the government of the church, as confirmed in 1592, by kirk-sessions, presbyteries, provincial synods, and general assemblies was readopted. The Westminster Confession of Faith was stated to be the public confession of the church. The body of the Kirk was to sail along on a fairly even keel until the early 1730's when the unity of the Church in Scotland was broken by the first secession.

If one is to understand the discipline of the church during this "quiet time" of its history, other aspects of the time must be considered. The civil law of the day, for instance, contained little to recommend it to us. "One should remember the place played in civil treatment of crime by the rack and the wheel, the boot, and the red-hot pincers, the bilboes and pilliwinks, 'Little Nese' and 'the Scavenger's Daughter'."¹

It was a time of crude canners and rough men. There was

¹ Henderson, G.D.: The Scottish Huling Elger. Page 102.

nothing gonteel in their way of life. Ecclesiastical and civil discipline and punishment reflected the state of society. It was this condition of the people that shaped the forms of satisfaction used.¹

A strict discipline was kept in all the churches of the Kingdom. In Ireland all who led immoral lives were excluded from sealing ordinances until they professed their repentance in due form. And in that country the contention between presbyterian and episcopalian continued.

Presbyterian marriages were admitted to be valid by the Civil Courts, yet Presbyterians who were married by their own ministers had often to confess themselves guilty of fornication in their respective parish churches, or else to pay a heavy fine to escape penance for entering into a contract which the Civil Courts admitted to be perfectly valid.²

Apart from such special cases, the ordinary disciplinary items in the kirk records prove that church practice was similar in Ireland and Scotland. Templepatrick: "Agnes Nowan appeareth confessing her fall into fornication with William Henderson several years ago. She is appointed to stand in public the next Lord's Day."³ Carnmoney: "Appeared James C_____ after citation and confessed his scandalous and erring (life) in having robbed goods from The Ban

¹Chamberlayne, The Present State of Great Britain. Pages 171-173.

²Latimer, A History of the Irish Presbyterians. Page 262.

³Barkley, A History of the Auline Eldership in Irish Presbyterianism. Appendix I, page 55.

and promised to be more watchful in time to come.¹ Connors:

John M. Colough appears before the Session according to the Session appointment he confessed his guilt in being over taken with drunkenness he is rebuked for his sin and is exhorted to repentance. The Session declares they are not yet come to a full resolution to take off his suspension until they were fully consider his case.²

Drummond: "The same day appeared Helen Moore and confessed her wrong in scandalizing Helen Eggers name and they shook hands and were reconciled together."³ Agnew:

Robert Fulton appears at this session confessing his disorderly carriage in occasioning as much disturbance about his seat and in evidence of penitence he resigns his title to the seat and he is content to take the half of Andrew Hunter's seat upon which the scandal is removed.⁴

The life of the whole church was diligently scrutinized by the use of "fraternal censures," from that of the individual family⁵ up through the judicatories to

¹ Barkley, A History of the Huling Eldership in Irish Presbyterianism. Appendix F, page 71.

² Ibid., page 105.

³ Ibid., page 135.

⁴ Ibid., page 149.

⁵ Ibid., pages 70-71.

The whole life of the community came under the scrutiny of the Session, as may be seen in the variety of cases dealt with, and the questions used by elders when visiting their quarters in Cabans. The questions were:-

'1. Had you family worship in all its parts here last night and this morning?'

'2. Do all members of the family decently attend worship without sleeping or trifling behaviour?'

'3. Do you every Saturday night cause Turf,

the synod.¹

Nor were conditions greatly different in England if one can judge from the visitation of York.² The questions to

water, wash potatoes and kail or greens be got into the house sufficient to serve till Monday morning?'

'4. Is your house swept every Saturday night and the ashes removed so that the family goes to rest before it be too late?'

'5. Did you Catechise your family here last Sabbath night?'

'6. Do you daily cause each of your family observe secret prayer?'

'7. Do you take the children aside and cause them to pray in your hearing secretly?'

'8. Do you carefully restrain your family from idle Jesting, Taunting and giving bye-names or quarrelling with one another?'

'9. Do you restrain them from gross or minced oaths, and telling any sort of lies in their common discourse?'

'10. Do you watch that the children play no games on the Sabbath day?'

'11. Do any of your family use tossing and rummaging men and women themselves or with any other diversion?'

'12. Do they use any Charms or certain days as Novr 1st, or encourage spae-men and the like by consulting, and giving heed to them?'

'13. Do they go to any Cock-fights, horse-races, or dancing?'

'14. Do they attend bonfires on Mid-Summer Eve?'

'15. What share of the Larger and Shorter Catechisms or of the holy Scriptures have they got by heart?'

'16. Do they attend the public Ordinances duly and decently?'

¹Latimer, A History of the Irish Presbyterians. Page 262.

²Articles to be Enquired of in the General Visitation of the Honourable Henry Linch Loan of the Cathedral and Metropolitcal Church of St. Peter's in York. Pages 10-12.

8. Both every Parishioner within your Church or Chappelry, during Divine Service? and Sermon behave himself orderly and soberly, both any of them create any Disturbance by Talking or Walking or depart out of the Church without urgent cause, before Divine-Service be

be asked by the Dean covered everything from conduct during the service to drinking and cursing. The cases before the

ended, and the Blessing given, do they kneel at the Prayers, and stand up when the Creed or Gospel are read, and do the Men and Youths keep their Hats off?

9. Doth any of your Parishioners exercise or perform the work of any ordinary calling, or any worldly labour, upon the Lord's-day, do they open their shops, or sell any Wares, or doth any Tavern or Alehouse-keeper suffer any Persons to Tipple on that day, especially in time of Divine-service, do any of them profane the Lords-day by publick sports and pastimes, or unlawful Games?

10. Have any of them been Married without Banns Thrice published, or lawful License obtained, have any of them been Married in private Houses, or not between the hours of Eight and Twelve, in the Forenoon? Have any of them been Married within the Degrees of Consanguinity or Affinity prohibited by the Table set forth in the Year, 1593?

11. Are any of your Parishioners guilty of the Crime of Fornication, Adultery, Incest, or other Incontinency, are there any Women within your Parish, that have born any Bastard Children before they were lawfully Married, who are the Fathers or reputed Fathers thereof? Are there any Men or Women within your parish, that are un-Married and Live Scandalously and suspiciously together or that Live together as Man and Wife, and pretend to be Man and Wife and it is not certainly known whether they be lawfully Married together or not? Are there any Persons that have been guilty of the Crime of Fornication before their Marriage, or that have had any Children born soon after Marriage, and before the time that Children conceived in lawful Wedlock are ordinarily born and brought forth; or are there any Persons commonly famed and suspected to be guilty of such Crimes within your Parish?

12. Are there any of your Parishioners addicted to excessive and immoderate Drinking & that have been frequently drunk, or that have profaned God's Holy Name, by frequent Swearing or Blaspheming or are frequently addicted to Cursing? Are there any that profess the Art of Sorcery or Conjuratation, or that go and consult with such Persons, either upon the account of

ecclesiastical courts of Northern England bore close resemblance to those of their Celtic brethren.

1708. Michall. Contra Thomas Sunley for neg-

pretence of Stolen goods, telling of Fortunes or such like unlawful occasions?

13. Do any of the Persons within your Parish, which have been Denounced Excommunicate, in your Parish Church or Chappel, presume to come to, and be present at Divine-Service, before their Absolutions have been publicly denounced in the said Parish Church or Chappel, by the Minister there, and have the Church or Chappel-Wardens there done their duty, in hindering such Excommunicated Persons from being present at or continuing there during Divine-Service, to the just Scandal and Offence of the rest of the Parishioners.

14. Is there any Strife or Contention in your Church or Chappel amongst the Parishioners about the Pews or Seats? Have any new Pews been erected in your Chancel or body of your Church or Chappel, or any Loft built, or any other alterations there made without leave of the Ordinary? Are any of them irregularly built, so as to deface the Church or Chancel?

15. Have any of your Parishioners (by Words only) Quarrelled, Scolded, Chided or Brawled, or hath any of them Smitten, Struck, or laid Violent Hands upon any Person in your Church or Church-yard or in your Chappel or Chappel-yard? Hath any Person Maliciously Struck another with a Weapon there, or drawn any Weapon there with any intent to strike any person with the same?

16. Have your Parishioners behaved themselves with that Reverence and Respect to your Minister that is due to his Place and Calling? Hath any of them abused him with any scurrilous, Opprobrious or Despising Language, or hath any of them Struck, or laid Violent Hands, upon him?

17. Doth any of your Parishioners refuse to pay their offerings and other Ecclesiastical Duties accustomed to be paid to the Minister, or his Deputy, for or in respect of Themselves, their Wives, Children or Servants; Doth any of them refuse to pay their accustomed Dues or Oblations, for Marriage, Burials, and Christenings. And have any women that have come to give Thanks after Child Birth refused to pay their accustomed Offerings? And what are the particular Summs that are unpay'd?

lecting to come to all publick worship and for not receiving the Holy Communion, he has informed the minister that he denies his faith and defied the court to compell him to come to church.¹

1690. Cumberworth. We Samuel Charlesworth minister and Richard Smith Chapelwarden certifie that Sara Shoard now standing excommunicate for fornication is too poor to pay for her absolution. She now expresses a desire to come to church having been kept from public assembly for almost four years. We ask that you will remit her penance without charge.²

"1706. Gargrave. Contra John Smith for calling the minister rogue rascall saying he would buy a colt halter to bring him and that there has been many an honest man hanged."³ He was given a public penance.

1704. Silkstone. James Beardsell churchwarden for embezzling part of the Communion money, for hospotering and belying the vicar, for being drunk on two Sundays together and for having served the office of church warden for two years without taking the oath.⁴

He was ordered to perform a public penance. "1707. Kriholme. Contra Anna Uxor Antony Naylor a habitual swearer and a railer to that degree she is a publick offence."⁵ She was excommunicated.

Evasion of, rather than submission to, strict discipline

¹ Addy, Ecclesiastical Discipline in the County of York.
Page 133.

² Addy, Ibid. Page 134.

³ Addy, Ibid. Appendix B, page 35.

⁴ Addy, Ibid. Appendix B, page 21.

⁵ Addy, Ibid. Appendix B, page 28.

was practised by the payment of commutation money. However this in itself is proof that discipline was still a byword.

Bishop Frampton of Gloucester enjoined his clergy 'If any were so obstinate as to refuse to hear the church, to let them know he had authority to deliver such a one to Satan that he might learn not to blaspheme', and was not afraid to act up to his determination in the case of a powerful peer, Lord Sherton, whom he compelled to pay the commutation money.¹

Ecclesiastical punishments in England included excommunication, exclusion from the Lord's Supper, Public Penance, and denial of Christian burial. The public censure required the delinquent to appear bare-headed and bare-footed, wearing a white sheet, and to prostrate himself on the ground. Then the offender's shame was exposed to the public by the minister.²

¹Overton, Life in the English Church 1660-1714.
Pages 326-327.

²Chamberlayne, The Present State of Great Britain.
Pages 193-194.

Besides the general Censure of the Church, which respects Church-Communion, there is another which touches the Body of the Delinquent, called Public Penance, when any one is compelled to confess in public his Fault, and to bewail it before the whole Congregation in the Church, which is done in this manner: The Delinquent is to stand in the Church- porch upon some Sunday, bare-head and bare foot, in a white Sheet, and a white Rod in his Hand; there bewailing himself, and begging every one that passes by to pray for him; then to enter the Church, falling down, and kissing the Ground; then in the Middle of the Church is he, or she, eminently placed in the sight of all the People, and over against the Minister, who declares the Foulness of his Crime, odious to God, and scandalous to the Congregation, &c.

It was not the church alone that prosecuted moral discipline in England and Ireland. The Societies for the Reformation of Manners were first formed in 1692 with the laudable aim of checking the prevalent immorality by bringing offenders under the arm of the civil power. To aid them in their work blank warrants were lodged for the ease of informers. Even a cursory reading of their records, allowing for exaggeration, proves that the Societies were very diligent in seeking out delinquents.¹ From Dublin to

¹Woodward, An Account of the Rise and Progress of the Religious Societies. Pages 59-62.

For they were instrumental in putting down several Open Markets that had been kept on the Lord's Day; and in suppressing some hundreds of Houses of ill Fame, bringing the Frequenters of them to due Shame and Punishment. And by the means of this Society alone, above 2,000 Persons have been legally Prosecuted and Convicted, either as keepers of Houses of Bowdery and Disorder, or as Whores, Night walkers and the like; and the Names of these Delinquents are set down in three black Lists which they have Printed: All which have been sentenced by the Magistrates as the Law directs, and have accordingly been punished, (many of them divers times) either by Carting, Whipping, Fining, Imprisonment, or suppressing their Licenses. THEY have also been instrumental to put down several Musick-houses which had degenerated into notorious Nurseries of Lewdness and Debauchery: As it appeared by a Paper printed on this occasion, wherein it was proved, that many Persons had been enguared by the rude Company which usually resorted to those Houses, to the ruin of their Honour; and some to such an utter extirpation of Modesty, that some of both Sexes had shamelessly danced naked in the licentious Brothels; which disorder had abounded to that degree, that above Twenty Murders had been committed in them within a very little time. All which must render them odious in the Eyes of all sober people.

BESIDES this, the Members of the Society have legally convicted multitudes of notorious

London the reformation went on vigorously. Thousands of warrants were put into execution. Swearers, drunkards, prostitutes, and Sabbath breakers felt the fire of their zeal.

The eagerness of most of the Church of Scotland to follow the forms of discipline is easily documented. The retiring Moderator, at the 1704 Assembly, made the fol-

swearers, Sabbath-breakers and Drunkards! And their Proceedings in all these Cases have been so strictly legal and unblamable, that they have for many Year- past, received great Countenance in the several Courts of Judicature; and have found very considerable Encouragement from the Lord Mayor and Court of Aldermen, who have honourably contributed towards the necessary Expense of so great and useful an Undertaking.

BUT yet these endeavours of so general a Good, did not proceed without many a Rub; if it had, it would have been the first time that Virtue had been advanced with Ease and Smoothness. We must have concluded, that either Virtue or Vice had lost its Nature, if the one could supplant and dethrone the other without passionate Opposition: Yea we might have thought that the Devil had lost his Envy to the Good of Mankind, or that all the Legions of the Infernal Pit had been cast into a deep Sleep, should they have suffer'd such a brave Onset to be made upon the Territories of Darkness, without making all the Interest they had. It was therefore no wonder at all, that the Undertakers of this Divine Work met with many Difficulties to struggle with in the Prosecution of it.

IN truth, they experienced not only the rude Assaults of licentious Debauchees, which they expected; but too often the Brow-beatings and Discouragements of such as were bound by the awful Bond of an Oath, and the Divine Trust of Authority to do otherwise, which was more difficult to bear.

I have known the day in which several Persons have with extreme sorrow complained, that they had spent above half of it in going from the House of one Justice of Peace to another, before they could get a Warrant signed. Such Complaints were too frequent, and alas! too true.

lowing observation on discipline.

Seeing vice and prophaneness and immorality doth so much abound, it deserveth consideration what more can be done for the restraint of vice, and more vigorous exercise of discipline for purging the Church of scandals.

Labouring under the certainty that they were but instruments of God's Will, the ministers of the Kirk were exhorted to administer justice with tenderness and impartiality.

He should act therein as answerable to God, with whom there is no Respect of Persons. Nathan re-proves David for his Adultery and Murder, 2 Sam. 12, 7, 9. Elijah roundly reproveth Ahab, 1 Kings 18, 18. so did Isaiah the Rulers, Isa. 1, 10. and Jeremiah, the King and Queen, Jer. 13, 18. John told Herod it was not lawful for him to have his Brother's wife, Mark 6, 18. and Luke 3, 19. We see how the Lord threatens the Prophet if he neglect to reprove sin, Ezek. 3, 18.¹

At times the clergy felt that the diligence that was required of them was being hampered. In 1768 they complained about the "want of the sanction of the Civil Power to enforce Ecclesiastic Discipline and Censure."³ They said that this encouraged offenders, especially the nobility and gentry, to refuse to submit to church process and to flaunt "crimes" from swearing to adultery.

The enthusiasm of the ministers was not always looked upon with favour. There were those who felt that the local pastor was little more than a tyrant who used his church

¹Harriek, The Moderators of the Church of Scotland. Page 104.
²Petrie, Works of Adam Petrie, Scottish Literary Club. Page 40.
³McFee, Memories of the Church of Scotland. Page 324.

as a court from which to issue personal edicts. In the circumstance that someone should disobey the decree, it was said that his property was confiscated and his person ostracized. Those opposed to the discipline of the Kirk implied that all this was done to suit the whim of the minister.¹

Certainly the system was open to extremes, absurdities, and various types of misuse. Men were suspended for horse-back riding on Sunday, even though they were going to the kirk. City guards would watch a house all night looking for offenders. Couples taking a walk were trailed by men hoping to catch them in some impropriety so they could blackmail the strollers.² But when condemning the clergy it is best to remember that the common people of the country warmly supported a rigid inquisition, the lack of it being one of the causes of grievance which was later to cause dissent.

That very system of discipline, severe it may be, and too inquisitorial, he was disposed to be thankful for as a staff on which he could lean, as he tried to climb up those heights of holy attainment towards whose summits he aspired.³

That strict discipline was kept, in some places at least, was a fact of great interest to, and made a deep impression on foreign travelers. "They never Swear, or Steal, neither do they take Gods Name in vain at any time,

¹Henderson, The Scottish Ruling Elder. Page 102.

²DeFoe, A Tour through Great Britain, Vol. IV. Pages 244-245.

³Walker, The Theology and Theologians of Scotland. Page 166.

they are free from Whoredom and Adultery, and of those other immoralities that abound so much everywhere else."¹ And again, "No Christian society in the world excels them for their exact observation of the Sabbath day, and few can equal them for their singular strictness and impartiality in punishing scandals."² The English observers saw in Presbyterianism an Inquisition whose chief purpose was to disgrace the Episcopal Clergy. They could not agree with a discipline that held to such a strict observance of the Sabbath, for instance, that "to bring in kail" or to have "whistled" or to have been "playing at bowls" was an offence.³

However, the system was not without its defenders. And one is forced to admit on reading the records that there was little perceptible difference in the exercise of discipline in Scotland between Episcopacy and Presbyterianism. The Reformed Church said its rigidity did not even compare with the former "Persecutions" of the Episcopalians. They said that their strictness of discipline was enjoined on them by scripture, and pointed out that before Excommunication the fallen were dealt with in tenderness, admon-

¹Martin, A Description of the Western Islands of Scotland. Page 258.

²Pinkerton, A General Collection of Voyages and Travels. Page 165.

³An Historical Relation of the Late General Assembly Held At Edinburgh, in a Letter from a Person in Edinburgh to His Friend in London. Pages 9-10.

ished, and prayed for in order to bring about repentance. And "if ... he show any sign of Repentance, how readily he is received into the Church again, and we cheerfully confirm our love to him".¹ Indeed one must acknowledge that because of its democratic form and its parity and its zeal; the Church of Scotland's Discipline could have served as an example to those who neglected and made fun of the ecclesiastical rule of deportment.²

¹ Rule, A True Representation of Presbyterian Government. Pages 9-10.

² DeFoe, Memoirs of the Church of Scotland. Pages 325-328.

It might be proper here to say a few words by way of Observation, concerning the present State of Discipline of the Church of Scotland, which was confirm'd also at the Time of the Union, and indeed I cannot refrain it for Two Reasons.

1. That I think it is a Debt due to the Church herself, who I find suffer innumerable unjust Reproaches, and is contemptibly thought of, not among her Enemies only, but even among those in England, whose Interest as well as Principles ought to move them to inform themselves better concerning her, and who being better inform'd, ought to do more justice to those who do so well deserve it at their Hands.

2. That she may be a Pattern to all the several Sorts of Protestants in Britain, and may shew them by her Example, not only what the Blessing would be of an establish'd well executed Discipline in a National Church, and of a laborious well regulated Clergy, but also how easy it is to attain to it.

I shall not examine into the Discipline of the Two National Churches in this Island, in order to compare them, to recommend one of them as better than the other: But for their due Emulation, this I may say, that supposing the Rules of their Discipline equally good, yet no man will deny Two Things.

1. That the Church of England Discipline is the most Neglected, the Execution of it the most Incumber'd, and the Prosecution made the most Difficult and Tedious, as well as Expensive and Chargeable to the Prosecutor of any Protestant

To have seen that church discipline did not differ much in principle in other countries, and that much was said in its favour as well as against it, in estimating its severity,

Church in the World.

2. That the Church of Scotland's Discipline is the most exact in Form, the most easy and cheap to the Prosecutor, and the most punctually and strictly Executed, without Partiality, Bribery, or any sort of Corruption, as also without a tiresome, tedious and dilatory Proceeding, of any Church Discipline in the World.

Some of the Consequences of this, are these;

1. The Ministers (for they are as much subjected to the Discipline of the Church as the People, and perhaps more) are daily and duly enquired into as to their Conduct, and fail not to be Censur'd, if they give occasion of Scandal in the severest manner; and in this Censuring of the Ministers in Scotland, it is to be particularly observed, That Ministers have there a severity used with them, if they offend, which the common people have not, and which perhaps no Ministers in the world but these, are subject to, (viz.) That if a Minister falls into any scandalous Crime, for which he is Deposed, he is Deposed for ever; a private Man is receiv'd again, after Scandal given, if he Repent and give satisfaction, But a Minister never.

NOTE, Upon Repentance and making publick Acknowledgement to the satisfaction of the Church, he shall be received again to Communion as a Fellow Christian, but as a Minister he is perfectly useless, and never can be repon'd,

NOTE also, That this severity is not by the Law of Discipline, but the Practice and Usage of the Church, the People will never hear or receive such a man as a Minister.

NOTE Thirdly, That the happy Consequences of this Severity, and which must be mention'd to the Honour of the Church of Scotland; is, That there is not a minister now preaching and Exercising the Office of a Pastor in the whole Church of Scotland, who can be charg'd with any immoralities or scandalous Behaviour, except such as are under Prosecution for the same.

one must remember the times and the nature of civil penalties.

We propose in succeeding chapters to examine the disciplinary activities of the Church in Scotland, and how its courts fulfilled the duties expected of them.

Could this be said of the Church of England, or could it be said that all due Care, as far as her own Laws would allow was taken to bring it to this, what a new Face there would be of Religion in this part of the Island!

2. The people are restrained in the Ordinary Practice of Common Inequalities, such as Swearing, Drunkenness, Slander, Fornication, Adultery, and the like: As to Theft, Murder, and other Capital Crimes, they come under the Cognizance of the Civil Magistrate, as in other Countries: But in those things the Church has Power to punish, the People being constantly and impartially prosecuted, they are thereby more restrained, kept sober and under Government, and you may pass thro Twenty Towns in Scotland, without seeing any Broil, or hearing an Oath sworn in the Streets; whereas if a Blind man was to come from thence into England, he shall know the first Town he sets his foot in within the English Border, by hearing the Name of God blasphem'd and profanely used, even by the very little Children in the Street.

CHAPTER ONE

The Formative Years, 1690-1707

The re-establishment of presbyterian church government in Scotland in 1690 resulted in a flurry of activity in the courts of the church. Commissions were appointed "to purge out all insufficient scandalous and erroneous negligent ministers."¹ Generally speaking this was an attempt to remove all the episcopalian clergymen and to establish authority in the hands of the presbyterians. Universities also were to be purged, and ecclesiastical discipline became a prime concern. By exercising discipline down through the judicatories to the kirk-session and thus to the people of the parishes, the presbyterians were able to make re-establishment a reality. To facilitate that process and bring the Books of Discipline up to date in a short and concise form, a committee was formed including M. Crawford and the Lords of Session. They drew up two papers which served as the basis of the Form of Process of 1707 and for the discussions about ecclesiastical processes which were to take place in the ensuing years.²

¹ M'Urleigh, A Church History of Scotland. Page 263.

² For the work of Matthew Crawford and other members of the committee see the Miscellaneous Church Correspondence in Appendix B, which gives the manuscript records of their "thoughts upon that subject of ye form of processes."

Another part of this disciplinary activity involved Acts "against Profaneness" which were introduced with regularity. The Act 1694, XIII can be cited as an example. After noting the "Impiety and Profaneness that aboundeth in this Nation," it exhorted the ministers of the church to pray and preach "against these vices." Church judicatories were to be zealous in exercising discipline. And in a more personal realm, servants were to be checked to make sure they possessed a "Testimonial," and heads of families to make certain that they engaged in family worship. Lastly,

the General Assembly recommends to all Ministers and Kirk-sessions, that they carefully apply to the several Magistrates of their bounds, that the Acts of Parliament against Profaneness, may be put in Execution, and particularly the Act of Parliament June 15, 1693 intituled, Act against Profaneness.¹

On the 11th of January 1697 a similar act was passed which referred to previous acts of Assembly and Parliament and closed with the injunction "that these presents be read in all the churches within this Kingdom twice a year from the pulpit, to wit, upon the first Sabbath after Whitsunday and Martinmas yearly."²

The Assembly of 1694 had the processes for discipline called to its attention when the question of the procedure of appeals was brought to their notice.³ And in December of

¹Acts of Assembly, 16 April 1694.
²Ibid., 11 January 1697.
³Ibid., 6 April 1694.

1695 it was recommended

to Mr. John Law and Mr. David Williamson Ministers, with the Assistance of the Lords Crosrig and Halcraig, Sir James Ogilvy and the Agent for the Kirk, to Excerpt the Acts of Parliament that concern the Church and that are against Profan-ity that the same may be printed, and Recommen-dation be made to all Kirk Sessions to have them.¹

In 1696 there were printed Overtures concerning the Discipline and method of Proceeding in Ecclesiastical Judi-catories in the Church of Scotland. The General Assembly of 1697, appointed "the same to be sent as overtures from private hands, to the several presbyteries, within this National Church."² The note to the reader at the beginning of the Overtures gives a summary of the work of the church which resulted in the Confessions of Faith and the Books of Discipline, and then goes on to state that the Over-tures are the result of a desire to carry on the same work of Reformation. This long form was a very complete book on policy of an explicit nature, and if adopted would have given the church a Third Book of Discipline.³ The comments of the presbyteries were to be given in to the Commission by August the 1st, who was then to prepare the Overtures for the ensuing Assembly.

The Assembly of 1698, having heard a report from the Commission which had met earlier in the month, and in addi-

¹ Acts of Assembly, 24 December 1695.

² Ibid., 6 January 1697.

³ Clark, A History of Church Discipline in Scotland. Page 140.

tion a report of a committee of its own number, appointed

Mr. Gilbert Rule Principal of the College of Edinburgh, Mr. William Dunlop Principal of the College of Glasgow, Mr. Robert Wylie minister at Hamilton, Mr. George Meldrum, and Mr. William Crichton at Edinburgh, Mr. John Vetch, Mr. Andrew Cameron, and Mr. George Barclay ministers; Sir James Stewart His Majesty's Advocate, Adam Cockburn of Ormiston Lord Justice Clerk, and Sir Colin Campbell of Abernethy, one of the Senators of the College of Justice ruling elders, to be a committee for considering the said overtures, and the animadversions made thereupon, and compare them with the Word of God, Books of Discipline, and the Acts of the General Assemblies of this Church, and to consider what is wanting, or to be added thereto, or altered therein, and to set out a new edition of the said Overtures, that the several presbyteries may have opportunity to animadvert thereon.¹

After that same Assembly, in accordance with the 15th Act which contained "Overtures against Profaneness," the Commission agreed to transmit to the presbyteries a short overture "concerning the method and form of procedure of the judicatories of the church against scandalous persons."² It dealt with "scandals whose grossness make it necessary to bring persons guilty oftner than once before the congregation." It pointed out to the offender that he could no longer be a sponsor for the baptism of his child, and that he would have to suffer a public rebuke whether penitent or not. After this had taken place the minister and elders were to be at further pains to bring them "to a due sense of their sin" and then

¹Acts of Assembly, 21 January 1698.

²Ibid., 2 February 1698.

to admit them to a public repentance. If there was no sign of reformation, then the offender was to undergo the lesser excommunication until that state was reached.

Beginning with 1697 and continuing for several years, the larger Overtures concerning Discipline were the cause of some consideration throughout the presbyteries of the church. The first four sections of chapter one dealt with the constituting of the judicatories and were passed with little comment; but the fifth section entitled, "Of Proceedings, in all Judicatories, and the Members Behaviour therein," received a number of comments from the church.

William Dunlop, a member of the committee, apparently felt that it was unnecessary that a court be informed of a cause beforehand, and that it should welcome all matters in the spirit that they were there to be of help to their erring brothers. This seems to be the logical conclusion from the fact that he scored out this provision in his personal copy of the Overtures.¹

The use of the witness seemed to attract much comment. Dunlop, himself, noted that defence witnesses should be heard before the evidence. The Presbytery of Dunbar felt that a specific length of time should elapse between the citation and the appearance of a witness.² Middlebie thought

¹ Overtures Concerning the Discipline in the Church of Scotland, I.V.7.8., (Marginal notes by William Dunlop).

² Overtures Concerning Discipline, Dunbar,
25 August 1697. MS.

it fit to indicate who would be an acceptable witness.

Abile witnesses are men and women come to the years of discretion in a ryt mind, not to near in kindred or affinity to the informer, or known enemies to the person under process: And all infamous persons uttraneous witnesses are to be rejected.¹

They also answered in the affirmative the question of Haddington Presbytery as to whether the same person may be admitted to be both informer and witness.² Dalkeith urged that "witnesses should always be purged whither the party desire or not."³

The oath of purgation in cases of scandal was another point on which a number of presbyteries sought to express their views. The Presbytery of Lochmaben felt that as presumptions could not be looked upon as legal proof, the oath of purgation should be offered.⁴ But that it should be used with caution and limitations. Middlebie was inclined to be even more cautious suggesting that "It is not in the Churches power to presse yt oath" and that it was best avoided. The view was put forth that if there were pregnant presumptions of guilt then the judicatory should proceed with censure. If the party was thought to be innocent, they stated, there was no need for the oath; and if he was thought by all to be guilty then the oath would not estab-

¹Overtures Concerning Discipline, Middlebie, 7 September 1697. MS.

²Overtures Concerning Discipline, Haddington, 1697-1704. MS.

³Overtures Concerning Discipline, Dalkeith, 13 September 1697. MS.

⁴Overtures Concerning Discipline, Lochmaben, 1697-1704. MS.

lish innocence but will only serve to increase the scandal. The Presbyteries of Dalkeith and Linlithgow were more concerned with the conditions under which the oath was to be administered, both asking that it be administered publicly. The latter suggesting that "the oath of purgation should be as public as the scandal."¹

Other comments from various presbyteries on the Overtures concerning Discipline, 1696, dealt with such diverse subjects as the St. Andrews' suggestion for "rules concerning marriage"² to a request from Lochmaben and Middlebie for other and more specific rules for censuring all scandals (including those not mentioned in the 1696 Overtures) so as to effect a unity of discipline in the church.

The General Assembly appointed further committees, for "revising the printed overtures for discipline and forms of procedure," each following year until 1702. The minutes of the said committee's meeting on the 6th of March 1703 will indicate why the much needed reform was taking such a long time being accomplished.

The committee finds that a committee appointed by ye Genl Assembly in an. 1701 had received remarks from several presbies upon the sd overtures & having compared ye same wt ye sd overtures, amending therto & some times adding. This prt committee of ye prt G.A. have read pt of ye sd printed overtures wt ye observations and alterations of ye committee of ye G.A. an. 1701. & judge ye remarks pertinent & judicious, but doe not so well understand ym as the members of ye sd former committee would. Wherefore

¹Overtures Concerning Discipline, Linlithgow, 1697. MS.

²Overtures Concerning Discipline, St. Andrews, 1697-1704. MS.

it is ye opinion of ye com. that ye G.A. appt those members of ye committie 1701 who are members of ye presbie of Edr to revise ye sd overtures wt yr own remarks & cause transcribe & imprint ym wt yr alterations & additions & leaving out all superfluous overtures, sentences & words & that they revise ye two chapters of overtures not yet pnted & add ym to ye reprinted Overtures & transmitt ye whole to the severall presbies of ye National Church that they may send yr opinion thereon to ye next G. Ass. & that ye Ass. doe fall upon some way how ye printed copies shall be transmitted to ye severall presbies that all concerned may have them. & that ye Commission of ye Ass. be appted to require an account of the diligence of the committee from time to time.¹

It was a continuing problem to get the presbyteries to hand in their opinions even though they received constant reminders from synod, Commission, and Assembly. The General Assembly asked for remarks on the twelfth of March 1703 and appointed a committee the next day to review the remarks for consideration later at that same gathering. The said group made its report nine days later. They stated that they had "made their own observes, delating many superfluous overtures, amending others and some times adding;" but they were of the opinion that yet another "committee should be chosen out of the bounds of the Synods of Lothian, Glasgow & Fife, or any others the General Assembly shall please, yet to revise the saids printed overture."² The revised work was to be forwarded to the Commission and then to the presbyteries.

¹ Overtures Concerning Discipline, Committee Meeting, 6 March 1703. MS.

² Registers of Acts of the General Assembly, 22 March 1703. MS.

This largely new committee began to meet in May. By the 26th they had revised through the first chapter noting that there "ought to be added something about ye relevance of ye libel and giving a list of ye witnesses to the partie accused before they be examined."¹ The committee continued to meet regularly throughout June and July; with John Law, George Meldrum, George Hamilton and John Sterling being most consistent in their attendance. The meeting of the committee on the 22nd of July 1703 suggested that

having now revised the printed overtures wt ye observes upon ym its ye humble opinion that *** a short forme of process were *** more usefull & yt this Large printed bok togthr wt ye chapters anent synods & assemblies might be revised & set forth by some judicious privat person as an historical account of ye order of this Church but not By publick authority.²

It having been decided that a form of process was in order, it was reported to the Commission in September that that work had been turned over to Mr. Law. Three months later nothing had been accomplished, John Law's wife having died in the meantime and his own health being poor. However the Commission apparently felt that he was the best man for the job and

recommended to Mr. George Barclay and Mr. David Blair to speak again to Mr. John Law and endeavour to prevail with him, if he have so much health yet to undertake what was recommended to

¹ Overtures Concerning Discipline, Committee Meeting, 26 May 1703. MS.

² Ibid., 22 July 1703.

him, about drawing up a short forme of process with relation to Scandall.¹

He indicated that he preferred not to do this work, but the Commission asked their members to speak to him yet again and

entreat him to undertake that work and to tell him that his Brethren in this city are willing to revise what he shall doe thereunto and give their advice in that matter, if he shall desire it, but that it lies on him to draw the first draught thereof.²

On the 30th of March, 1704 the General Assembly asked the presbyteries to send in written opinions on the Overtures concerning Discipline, 1696. And "taking to their consideration that all the former endeavours about bringing the printed overtures for discipline to a period, have not had the desired effect," a new committee was appointed.³ They were to agree upon a form of process against the next Assembly. The Commission was to revise the Overtures, have them reprinted and transmitted to the presbyteries that their comments could be brought to the next General Assembly.

The committee for the form of process met in the Lord Advocate's lodging at the close of the Assembly. After discussing their task, "it was recommended to my Lord Advocate to draw up the same, and when he is ready to acquaint the Moderator, that the committee may again be called, to con-

¹Records of Commission of the General Assembly,

1 December 1703. MS.

²Ibid., 2 December 1703.

³Registers of Acts of the General Assembly,
30 March 1704. MS.

sider yrof".¹ In December, 1704 it was reported that "by reasons of the Lord Advocate indisposition ... it is not yet ready". The Commission urged the committee to act "going on with that work".²

Those appointed to revise the Overtures Concerning Discipline had been meeting both in St. Andrews and Edinburgh in the meantime and had completed their work. Of interest are the following proposals with the committee's recommendations.

- 1.4 If the names of the witnesses ought to be given to the party before they be cited. (allowed)
- 2.7 When an unmarried woman brings forth a child, (it was suggested that they should) add, or married and her husband notoriously absent. (allowed)
- 2.7 The oath of purgation in the universal practice of this church, having been before the congregation, a change here restricting it to kirk sessions, would be duly advised. (advised)
- 2.7 That the use of sackcloth & ye repentance stool being an ancient practice it be not hastily discharged by an Act but rather yt it be let fall into disuse as yudicatories shall see meet. (to be considered)³

When the Overtures were reported in to the Commission they were turned over to a committee for final revision. They brought in a memorandum that the Overtures would be best published by some private person noting the "several defects qch are observed by presbys".⁴ The Larger Over-

¹ Papers Concerning the Form of Process, Committee meeting, 17 April 1704. MS.

² Records of Commission of the General Assembly, 8 December 1704. MS.

³ Overtures Concerning Discipline, Committee meeting, December 1704. MS.

⁴ Ibid., Committee memorandum, 9 December 1704. MS.
The following defects were noted in the memorandum:
The committee leaves it to the Commission to consider if there might not be some directions

tures of 1705 were finally printed. They were largely the 1696 overtures to which had been added chapters on the synod and General Assembly, and thus were virtually a Third Book of Discipline. But they were never officially approved as the discipline of the church. The first chapter deals with the constituting of judicatories, the duties of the Moderator and Clerk, and the method of proceeding in meetings. The work of Kirk-sessions is given in the second chapter. The third is on proceedings and methods in presbyteries, ordination and censuring of ministers, visitation of parishes, appeals and references of Kirk-sessions, excommunication, etc. The last two chapters are on synods and the General Assembly.

given for censuring liars, thieves, cheaters, fighters, scolding, absenting from Gospel ordinances, charming and consulting with charmers, &c. Middlebie desiderate a chapter or section, concerning scandals in general. Secondly anent the stated and particular censures of scandals, which ought to be here, if this be designed to be made a book of discipline. Lochmaben proposes that some rules may be thought of, for censuring the several sorts of scandals of private persons which are not mentioned in the printed acts of Assembly. Secondly that some direction be given about witchcraft and charming. Glasgow proposes, that there be a section added, directing how to deal with factions and schismatick persons. Secondly anent censuring theft and fighting. Thirdly they propose, that in case there be ground to suspect the ignorance or decay of knowledge of Ruling Elders, they may be examined by the minister in presence of the session. Fourthly, that the tenor of the oath of purg'n from scandal be insert. Fifthly, that there be rules concerning the presbyterial visiting of Grammar Schools. Sixthly that presbyteries be exhorted to continue in adding and amending the overtures for discipline.

In April of 1705 the Assembly appointed a committee, including among it William Carstairs who was the Moderator,

to prepare a short form of process for regulating the procedure of church judicatories, and appoints them to have the same in readiness against the next quarterly meeting of the Commission in June, that they may revise and transmit the same to the several presbyteries, who may send in their opinions thereof to the next General Assembly.¹

The Commission took to its task with vigour and with the advice of Her Majesty's Advocate and the Lord President of Session, who were members of the committee, they were able to present the first four chapters for discussion at their meeting in the Spring of the following year. On this occasion it was noted that some difficulties had arisen "concerning the oath of purgation mentioned in the fourth chapter",² which was revised in due time to the satisfaction of the Commission.

The Form of Process was publicly read to the General Assembly on the 9th of April, 1706.³ It was

ordered to be printed and transmitted as overtures to the several presbyteries within this National Church, and the saids presbyteries are ordained to consider the same and send in their opinions thereon, and such amendments as they shall judge fit to make upon the same.⁴

The next year found the presbyteries busy making the observations required. The remarks are quite similar in

¹Registers of Acts of the General Assembly,

12 July 1705. MS.

²Records of Commission of the General Assembly,

28 March 1706. MS.

³For a complete copy of the Form of Process see Appendix A.

⁴Registers of Acts of the General Assembly,

9 April 1706. MS.

nature to those made in reference to the Larger Overtures. At least ten of them commented on section four of chapter one. The three year dormancy period for scandals was not thought to be suitable. Kirkcaldy, and other presbyteries, felt that the question of whether or not a scandal should be revived should be left to the judgment of the individual presbyteries, and in any case should be longer than three years.¹ As a result of this protest the length of dormancy was changed to five years in the final draft of the Form. They were less fortunate in their protest against the mandatory use of written citations.²

The phrase, "after which no more witnesses should be allowed to be added" in the ninth section of the second chapter met with opposition in a great number of presbyteries. They were all agreed that the limiting of witnesses to those listed before a case began would prevent the hearing of additional information which might come to light after a process had been initiated. This comment from Perth is typical of fifteen or more presbyteries.

Its thought hard to bind up ye hands of judicatories from improving at discoveries providence shall make after ye examinations of ye witnesses summoned att first although we readily grant yt opening too wide a door on ye oyr hand might occasione one inquisitione rather yn a formal & legall process.³

¹Papers Concerning the Form of Process, Kirkcaldy, 5 March 1707. MS.

²Ibid., Dundee & Forfar, 1707. MS.

³Ibid., Perth, 25 March 1707. MS.

Their collective wisdom on the matter was recognized and the words were omitted in the overture finally adopted.

"Concerning the Sin of fornication, Adultery, and scandalous carriage tending thereto," is the title of the fourth chapter; and in sections seven, eight, and nine the oath of purgation again drew much comment including that of the Auchterarder Presbytery that "ye form of the oath to be taken by scandalous persons seems to be too mild".¹ Some felt that the session should be free to press for an oath, but most reaction centered on the place where the oath was to be taken. Haddington wanted it taken before the presbytery, but the others agreed with the following opinion of the Presbytery of Aberdeen.

Considering 1. that oaths of purgation follow upon scandals that are very clamant and notour to the whole congregation.
2ly That it being tendered publicly in face of the congregation not only tends to impress the conscience of the parties swearing with more awe and reverence of God angels and men, But also proclaimeth to the people the impartiality of the judicatory, and so lendeth much to edification: it is humbly ~~_____~~ that all such oaths are designed for an end of controversy, and to reconcile the parties swearing to the whole congregation, which opinion is the more confirmed, that private purgation before a church session hath temptation in it to perjury, and that persons who have confessed guilt, have often made such an offer.²

A compromise was written into the final edition with the presbytery determining if the oath was to be taken

¹Papers Concerning the Form of Process, Auchterarder, 1707. MS.

²Papers Concerning the Form of Process, Aberdeen, 1707. MS.

before kirk-session or presbytery, with the oath being intimated to and if necessary acknowledged in face of the congregation. This was not to be binding but only a recommendation.

There were few other comments except on the order to excommunication which is contained in the eighth chapter. Several opinions were given, but of particular interest are the words of Dumfries.

§.9 there should be a particulare directorie for admonitions, & prayers in order to excommunicate.
§.14 the directorie for prayer before pronouncing the sentence of excommunication be as large as the one before absolution.¹

Dumbar Presbytery concurred with these ideas.

In 1707 the Assembly considered the Form of Process for five days. And after changes and amendments had been made, on April the 15th.

the General Assembly did by their votes nemine contradicente and hereby do ratify and approve the forsaid form of process as now amended in the whole heads and articles thereof, and appoint and ordaine the same to be observed and practised by the respective judicatories of this church as an act and ordinance of Assembly, and as fixed binding rules and directions in the whole matters therein contained except the seventh, eight and ninth paragraphs of the fourth chapter and what concerne the pressing of the oath of purgation, as to which the General Assembly supercedes at this time to enioyne the observation thereof as positive standing rules. But they did and hereby do unanimously recommend to the several presbyteries and other judicatories of the church, that they regulat themselves according to the advice

¹ Papers Concerning the Form of Process, Dumfries, 1707. MS.

therein insinuated, as they shall find to tend most to edification.¹

Three days later it was suggested to the presbyteries to compare the Larger Overtures, 1703, with the Form of Process and to report

from time to time their judgment, as to what is yet wanting and necessary to be added to both these overtures, that the same might be supplied, by adding to either of them, untill this church arrive at a compleat system of rules in their proceedings in matters of discipline.²

The Form of Process covered a large range of disciplinary problems. The following are the chapter titles

1. Concerning the Church Government, Discipline, Scandals, and Censures in general.
2. Concerning the entering Processes, Citation of Parties and Witnesses, and taking Depositions, and absent Fugitives from Discipline.
3. Concerning Swearers, Cursers, Profaners of the Lord's Day, Drunkards, and other Scandals of that Nature.
4. Concerning the Sin of Fornication, Adultery, and scandalous Carriage tending thereto.
5. Concerning Appeals from a Kirk-session to a Presbytery, &c.
6. Concerning Processes which natively begin at the Kirk-session, but are not to be brought to a final determination by them.
7. Concerning Processes against Ministers.
8. Concerning Processes in order to the Censure of the greater Excommunication.
9. Concerning the order of proceeding to Absolution.³

During the seventeen years leading up to the adoption of the Form of Process, the church had to consider various other aspects of the problem of discipline. The question

¹ registers of Acts of the General Assembly,
18 April 1707. MS.

² *Ibid.*, 21 April 1707.

³ for a complete copy of the Form of Process see Appendix A.

of process and procedure was not only before the Assembly and its Commission; but before the synods and presbyteries also. An example is this minute from the records of the Synod of Lothian and Tweeddale.

Upon Report from the said committee for overtures &c. anent an oyr reference from the said presbitrie of Wdbr to this synod for advyce, what should be done with scandalous persons in whom the minister & eldership find no satisfiing signes of repentance. The synod gave it as their advyce, that the ther appear no signes of repentance, that yet the parties may be brought to a publick reproof before the congregation, and if thereafter no signes of repentance appear, they are to be absolved from church censure till much pains be taken on them and some fruit yrof appear yron.¹

The Assembly, 1704, "considering that some persons when challenged for scandall, do turn popish, or pretend to do so", in order to evade censure; enacted that the judicatory should "proceed to the censure of the higher excommunication, against such, after all the due pains taken to reclaim them proves ineffectual".² On that same day the General Assembly noted "that persons do continue to converse unnecessarily and familiarly with such as ly under that sentence as if they were not excommunicated." And to counteract this breach of behaviour, they appointed that the sentence was to be intimated in all the churches of the presbytery. If the trouble continued it was to be announced throughout the synod; and if the problem still

¹ Synod of Lothian & Tweeddale, 21 October 1691. MS.

² Registers of Acts of the General Assembly, 27 March 1704. MS.

persisted, the sentence was to be intimated in all the churches of the kingdom. The Assembly went on to take other steps to make sure that the people of Scotland were well aware of the seriousness of discipline.¹

In 1706 the General Assembly was again exhorting "all magistrates ministers and others in their respective capacities to hold hand to the execution of the laws against prophaneness" just as it had done twelve years previously.²

From the establishment in 1696 until the adoption of the Form of Process in 1707 the judicatories of the church showed great interest in all matters concerning discipline.

¹ registers of Acts of the General Assembly,

27 March 1704. MS.

It being moved that the abstract of the laws against prophaneness with the proclamation of Council, ordinarily read at the two terms in the year, may be done before and not after sermon, to prevent peoples withdrawing before reading thereof, and that the reading of the same may be to the better purpose, that ministers be enjoined to preach at the said diets against prophaneness, the Assembly remitted it to the committee for overtures to bring in an overture to this effect.

² registers of Acts of the General Assembly,

13 April 1706. MS.

CHAPTER TWO

The Reflective Years, 1706 - 1730

The adoption of the Form of Process, 1707, did not put an end to the church's activity concerning discipline. The work continued toward finding a more comprehensive system of rules. The Assembly of 1708 renewed the request to presbyteries to turn in "their opinions about the large overtures concerning the method of procedure in ecclesiastical judicatories which were transmitted to them by former Assemblies".¹ On the 26th of April the following year the same request was made, enjoining that opinions on

the second chapter sections first, second third fourth fifth and ninth thereof and chapter third sections first, second third fourth fifth sixth twelfth and thirteenth of that chapter

be sent to the Commission before August. The Assembly recommended either diets "in hunc effectum" or the appointment of a committee, and asked "Presbyteries to choose the wisest and most grave and experienced of their number to represent them in the next Assembly".² By 1710 a few presbyteries had sent replies and the Commission tried once more to extract them from the others.³

¹Registers of Acts of the General Assembly,

² 27 April 1708. MS.

³ibid., 26 April 1709.

⁴Records of Commission of the General Assembly, 4 August 1710. MS.

In 1711 Assembly's attention was turned toward the act concerning "Probationers and Questions to be put to Ministers at Ordination", but the Commission was still at work on the discipline question as the following record indicates.

The Commission nominat the Reverend Mr. William Carstares, Mr. Thomas Wilkie in Edinburgh, Mr. William Wishart, Mr. John Flint, Mr. William Hamilton, Mr. John Stoddman, and the Moderator ministers, as also the Lord President of the Session, the Lord Advocate, Lord Ormiston, and Sir James Stewart junior ruling elders, as a committee for revising the printed overtures about church discipline and government, with the remarks thereupon sent from Presbyteries, and they are to have their first meeting in this place upon Thursday the eighteenth day of January instant, at three of the clock in the afternoon, and report to the Commission at their next meeting.¹

The Assembly of 1711 heard a first reading of

the larger overtures for discipline, proposing some rules to be observed in this church, in the celebration of marriage, and also of the sacraments of baptism and the Lord's supper, and in the planting of vacant churches.²

1712 saw the passing of the Toleration Act.³ It also saw the first question brought to the Assembly concerning an interpretation of the Form of Process. The query was made by the Synod of Aberdeen, and had to do with the meaning of the first paragraph of the seventh chapter which states that "all processes against any minister are to begin before the presbytery to which he belongeth". Mr. James Maitland was the leader of a group of dissenters who maintained that the above clause should be applied in the

¹ Records of Commission of the General Assembly,
6 January 1711. MS.

² Registers of Acts of the General Assembly.

³ 14 May 1711. MS.

See chapter three on "The Civil Authorities", page 36.

case of Mr. William Hunter. Hunter had been neglecting the ordinances and keeping company with intruders while taking the waters at Peterhead. The presbytery at Peterhead wrote to his presbytery who sent back a very angry letter on his behalf. The Synod of Aberdeen appointed Mr. Hunter to be cited by his own presbytery and to appear before the other. It was to this action that Mr. Maitland and three others objected in very militant terms.¹ As a result they were informed of the "displeasure and dissatisfaction" of the members of Assembly for their "litigious humour". It was judged

that ministers offending within the bounds of their own Presbytery, shall be judged by their own Presbytery and in no case by their Kirk Sessions; But in case ministers happen to offend within the bounds of another Presbytery, it is most congruous that they be judged by that Presbytery within whose bounds the offence was committed.²

Other events then occupied the mind of the church, and it was 1718 before thoughts were again guided toward a system of rules for judicatories. The General Assembly revived the seventeenth Act of Assembly, 1710; and again appointed the presbyteries to transmit their remarks upon the Larger Overtures to the Commission, which appointed a committee for classifying the remarks.³

The Commission meeting in March and May were unable to complete the work, so Principal Stirling was appointed at

¹ McCrie, The Hodyer Correspondence, Volume 1. Page 290.

² Registers of Acts of the General Assembly,
10 May 1712. MS.

³ Records of Commission of the General Assembly,
29 May 1718. MS.

the August meeting to be the convener of a committee to finish the task. They were to meet in Glasgow and bring in a report to the November gathering. Other members of the group were Professor Simson, John Scott, John Gray, John Hamilton, William Love, and Robert Rodrow, Ministers; the Lairds of Aikenhead and Heartfield, Provost John Aird, and Mr. Colin Drummond, and Mr. Robert Stewart, Professor of Philosophy.¹ It is interesting to note Professor Simson's presence on the committee as his case of suspected heresy had been before the Assembly just previously.

On November 11, 1719, Principal Stirling was able to report that they had completed their work.² These overtures, concerning Kirk-sessions and Presbyteries only, were printed and sent out to the Presbyteries for their consid-

¹Records of Commission of the General Assembly,
13 August 1719. MS.

²Ibid., 11 November 1719.

The following report was minuted:

The committee appointed by the Commission to revise and prepare the Larger Overtures, &c., having mett att severall diets, did, in obedience to their instructions, consider with all care and diligence, the two chapters of the Larger Overtures, which relate to Kirk sessions and presbyteries, together with the remarks upon the said overtures transmitted from the severall presbyteries of this church; and also the book of discipline, propositions concerning church government, and acts of Assemblies relative thereto. And having examined all these and compared them together, they did collect from them, and put in order the two following chapters, which are now humbly presented to the Reverend Commission; in all parts whereof they studied a perfect conformitie to the principles and rules established by the Acts of the Assembly, Second Book of Discipline, &c. and did as near as they could, keep the very words used by them.

oration. There are four main sections as follows.

- I. Of the Constitution of Kirk Sessions.
- II. Of the Power and Duty of Kirk Sessions and of the several members thereof.
- III. Of the Election and Ordination of Elders and Deacons.
- IV. Of Privy Censures in Kirk Sessions.

A subsequent controversy arose over several sub-sections of Sections I. and II.¹ The debate concerned the balance between clergy and laity in the kirk-session, and the basic question of who was in charge and in control. The 1720 Assembly found it necessary to make the following explanation.

The Kirk Sessions are to meet at such times as are most convenient for the well ordering the affairs of their congregations, the ministers and elders ought always to study harmony and unanimity; but if any questions fall out in a session in matters of discipline to be executed by the minister, nothing should be concluded, unless it be agreed to by the minister and plurality of elders, till the Presbytery give their advice and direction thereupon. And in a collegiate session, where there are two ministers, one of them agreeing with the majority of elders, or both with half of the elders, shall decide a cause, if more than two ministers, then a majority of both ministers and elders, or an equal half of one agreeing with the majority of the other, is necessary for a decisive sentence in matters of discipline to be executed as above.²

Men like Anderson of Dumbarton considered "that the OVERTURES are evidently calculated for demolishing the ruling Elders".³ Those who favoured the provision said

¹For a study of the controversy see:

Dunlop, A. Ian: Records of the Scottish Church History Society, Volume XIII, Part III, 1959; The General Session: A Controversy of 1720.

²Registers of Acts of the General Assembly, 23 May 1720, MS.

³Anderson, Mr. Anderson's Letters Upon the Overtures concerning Kirk-Sessions and Presbyteries.

that it protected the clergyman in respect that it freed him from the possibility of having to act against his own convictions in the event that he was over-ruled by the session. The Overtures were never adopted.

There were no further deliberations on methods of discipline in the following ten years. The regular attempt to suppress immorality and vice had continued after the adoption of the Form of Process. On the advice of the Commission the General Assembly on the 8th of May 1714 drew up an Act against Profaneness. It was to be printed in a small volume, and contain such previous statements against profaneness as the Queen's proclamation of August 18, 1708, the 13th Act of Assembly 1694, and the 7th and 11th Acts of Assembly 1699, and it was to be read from all the pulpits of the land on the 3rd Sunday of August 1714 and be preceded by an appropriate sermon.¹

The following reference to immorality in Ross gives evidence showing why the church had worked so diligently towards an exact and comprehensive form of discipline.

¹⁷⁰⁰ They must observe with the greatest horror, that a spirit of atheism and infidelity has broken loose amongst them, especially in some persons of more distinguished characters, and pretending to more than common attainments in learning, to which they chiefly imputed the lamentable examples there are amongst them of persons deserting their former profession of religion and zeal for it, and breaking the solemn vows and engagements, wherewith they bound themselves to adhere to it, as also the licentious

¹ Registers of Acts of the General Assembly,
5 May 1714. MS.

latitude which is too commonly taken to controvert, deny, and ridicule the fundamental principles of our holy religion, and to vent, propagate and disseminate in common conversation malicious exceptions and prejudices against them, concerning which a process was lately intended by them and carried from them by an appeal to the said Synod, and from them by an appeal to the ensuing General Assembly.

2^{do} There is amongst them, an avowed contempt of ordinances by absenting and withdrawing from them, wherein some persons of interest and influence in the country do give too much of an example to others; And to fortify themselves and others in this profane course, they take the liberty to impugn the mission and functions of ministers, and that not by such topics as are commonly urged by the prelatical party, but by those topics & common places, which deists and libertines use against the business of priestcraft as they profanely call it in all religious persuasions of whatever denomination. 3^{do} As profane swearing and blasphemous oaths are too common amongst several of all ranks, so the frequent perjuries, which "as is credibly reported and believed" are committed in managing trades, are no small matter of grief and offence to all that fear the Lord. 4^{tho} The Lord's Day is so grossly profaned, and in the most presumptuous and daring manner, especially by many persons of distinction, that if an effectual step be not put to these disorders, it is to be fear'd that all regard to the Christian Sabbath will be extinguished. It is too frequent a practice for gentlemen in bodies with their servants and baggage to cross ferries on the Lord's Day, to traverse the country, to drink and ramble thro' several parishes, and to call out of churches innkeepers and ferrymen, by which means they neither attend on ordinances themselves nor allow others to attend, who would attend, were it not the diversions & snares by which they inveigle them. There was such a clamant representation concerning a late instance of this kind laid before them the last meeting of the Synod of Ross and Futherland, that the Synod found it duty "because of the extensive nature of the scandal" to appoint them the said Presbytery with correspondents from the neighbouring presbyteries to enquire into and prosecute the same according to the Form of Process. It is likewise too common a practice for boats and ships to loose out of harbours on

the Lord's Day without any apparent necessity. 5th They must likewise regret that many other abominations are growing fast and multiplying amongst them, such as drunkenness and tippling, and that sometimes in the most scandalous and unseasonable times, as late on Saturday's night and too frequently on the Lord's Day and in time of publick worship, uncleanness in all its kinds, oppression, violence & fraudulent dealing. 6th They must look upon it as a great judgment upon us from the Lord for these our abominations and for our contempt and misimprovement of our Gospel, light and liberty, that the country is broke into factions, parties, and unnatural & unchristian divisions, whereby there is almost an universal estrangement and alienation of affections among the people; and this, alack! has got too much the ascendant over those who sometimes join'd in opposing the common enemies of our civil & religious interests. 7th Notwithstanding that they in their stations and capacities do use their utmost endeavours in the exercise of church discipline to curb and put a stop to these abominations, yet they find that all their endeavours in this kind prove ineffectuall, as being too weak to stem the tide, in regard they have no concurrence or assistance given them from executors of the laws against profaneness, nor do they in their capacity take such notice thereof as is necessary; but in the contrait as too many in publick stations are manifest examples of profaneness in their own persons and practices, and therefore the more ready to indulge and connive at it, in others; so they must particularly remark and testify that sundry of the officers employ'd about his Majesties' revenues of customs and excise are deeply and avowedly guilty of many gross disorders.¹

¹ Registers of Acts of the General Assembly, 22 May 1722. MS.

CHAPTER THREE

The Civil Authorities

In order to better understand the workings of church discipline in the period from 1690 to 1730 it is necessary to examine the relationship between the civil and ecclesiastical powers.

On the 26th of May 1690 the Confession of Faith was read into the "bookes of Parliament".¹ And twelve days later the Scottish Parliament passed an act "ratifying the Confession of Faith & settling Presbyterian Church Government".² The chapter of the Confession, "Of the Civil Magistrate", defines the relationship between church and state. The following sections are relevant to our purposes.

1. God ... hath ordained Civill Magistrates to be under him, over the people, for his own glory and the public good; and to this end hath armed them with the power of the sword, for the defence and encouragement of them that are good, and for the punishment of evil doers.

3. ... he hath authority, and it is his duty to take order, that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered, and observed; for the better

¹Acts of the Parliaments of Scotland, Volume IX., Page 117.
²Ibid., page 133.

effecting whereof, he hath power to call synods, to be present at them, and to provide that whatsoever is transacted in them be according to the mind of God.¹

For a period of years following the re-establishment of presbyterianism, the parliaments cooperated with, and supported the work of the National Church. On 19 July 1690,² 28 June 1695,³ 9 October 1696,⁴ and on 31 January 1701 the parliaments passed acts "against Profaneness".⁵ On 12 August 1696⁶ and 12 June 1702 acts "for a National Fast" were passed.⁷ These fasts were proposed by groups of clergymen, and as acts of Parliament carried fines of one hundred pounds Scots for breaking the fast. One half of the penalty was to go to the judge and the other half to the poor of the parish.

Other laws passed by Parliament that were meant to strengthen the hand of the church were the "Act against Blasphemy", the "Act against Irregular Baptisms and Marriages", and the "Act for Restraining of the Profanation of the Lords-day by keeping Weekly Mercats on Monday and Saturday"; all passed on the 28th of June 1695.⁸ In 1698 an "Act against Clandestine and Irregular Marriages" was passed.⁹ This law stated that celebrators of such illegal

¹ Acts of the Parliaments of Scotland, Volume IX.
Pages 127-128.

² *Ibid.*, page 198.

³ *Ibid.*, page 387.

⁴ *Ibid.*, Volume X, page 65.

⁵ *Ibid.*, page 279.

⁶ *Ibid.*, page 142.

⁷ *Ibid.*, Volume XI, pages 16-17.

⁸ *Ibid.*, Volume IX, pages 386-388.

⁹ *Ibid.*, Volume X, page 149.

marriages were liable to imprisonment, banishment and corporal punishment. Those who stood as witnesses at these banned ceremonies were to be fined one hundred pounds Scots, or if they were poor, to be punished corporally. The fines for the persons married were as follows: Noblemen - two thousand pounds, Barons and Landed Gentlemen - two thousand marks, Gentlemen and Burgesses - one thousand pounds, and all others - two hundred marks and imprisonment until payment was made.

Other civil authorities also passed acts which strengthened the arm of church discipline. For example in 1702 the Grathie Kirk-session was informed that "Mr. Arthur Forbes of Breda, one of the Justices of Peace in this province" had passed an order "against carrying of timber or other carriages on the Lord's Day under pain of losing their loads".¹ In Grange Parish in 1721 the Bailie of Regality passed an "Act against dropping stones or throwing down dust from the common loft on the people below". The fine for contravening this act was one shilling.² And in the highland Parish of Killiehuntly the minister read an Act of the Court from the pulpit in 1728 to the effect that fiddlers playing at "Leichwakes" were subject to pay a fine of five pounds Scots to "James Gordon, Procurator-Fiscal of Court". Their employers were to be fined twenty pounds.³

¹Stirton, Grathie and Grange. Page 206.

²Grange, The Parish of Grange. Page 21.

³Macpherson, Glimpses of Church and Social Life in the Highlands in Olden Times. Page 34.

The church's practice was to call upon the civil authorities to initiate new laws, to give legal advice, and to enforce the existing laws. In this spirit of cooperation it was quite normal for the Assembly to ask Parliament in 1690 to prohibit the holding of markets on Saturdays and Mondays which led very often to breach of the Sabbath.¹ When "the great profanation of the Lords day by multitudes of people vaying idly upon the streets of the citie" got out of hand, the Assembly appointed their Commission

to address the Right Honourable the Lords of Her Majesties Privie Council, that their Lordships may be pleased to give such orders and take such courses, for restraining those abuses, as they in their wisdoms shall judge most effectually.²

The Lord Advocate was called upon to decide whether a man was legally free to marry again after his wife had deserted him for four years;³ to carry on a process against a blasphemer;⁴ to advise whether legal action could be taken against John Rodhart for incest, a woman dying in childbirth having accused him of fornication with her after she had told him of previous guilt with his brother;⁵ to present the Presbytery of St. Andrews' case, against some persons suspected of witchcraft in Pittenweem, to the Privy Council;⁶ to decide whether a woman's second mar-

¹Register of Assembly, 29 October 1690. MS.

²Registers of Acts of the General Assembly, 10 April 1705. MS.

³Synod of Lothian and Tweeddale, 7 November 1695. MS.

⁴Presbytery of Edinburgh, 1 April 1702. MS.

⁵Records of Commission of the General Assembly,

29 June 1703. MS.

⁶Ibid., 7 June 1704.

riage was legal, there being some doubt about the death of her first husband;¹ to remove a Justice of the Peace who was under the sentence of greater excommunication;² and to prosecute a man alleged guilty of

prophaning of the Lord's day, interrupting the public worship of God, trampling upon the authority of & threatening the minister of Eskdalemoor & abusing the said presbytery by several scurrilous & unchristian expressions to the said minister in the face of the congregation.³

The Lord Justice Clerk was asked to intervene in the case of a laird who was subverting the work of a clergyman.⁴ The Marquess of Annandale was applied to, "to cause punish the said John Stewart for his former contumacy and oblige him to satisfy the judicatories of the church for the scandalous wherewith he is charged".⁵ Sir James Agnew, Sheriff, was asked by the Presbytery of Stranraer to imprison a Sabbath breaker until he satisfied church discipline.⁶ John Schirizie was reported to the Sheriff of Invernesshire for his contumacy.⁷

The local magistrates were also called upon to do their part, to give advice, and to enforce the laws. The type of legal advice required is illustrated in these three cases

¹Synod of Lothian and Tweeddale, 7 November 1706. MS.

²Records of Commission of the General Assembly, 5 January 1710. MS.

³Synod of Dumfries, 11 October 1711. MS.

⁴Records of Commission of the General Assembly, 9 August 1722. MS.

⁵Ibid., 4 December 1702.

⁶Presbytery of Stranraer, 4 May 1720. MS.

⁷Mitchell, Inverness Kirk Session Records. Page 71.

which occurred in 1696. What was the Presbytery of Wigtown to do in the case of a woman who refused to give the name of the father of her illegitimate child?¹ Whether a woman ("whose first husband is not proven dead") and a man married by an English preacher were in fact legally married?² What was the Presbytery of Falkirk to do in the case of a woman who denied adultery before both session and presbytery while a man confessed the scandal?³

The magistrates were asked to enforce such laws as the following: "the laws against witchcraft charming and superstitious customs, & going in pilgrimage to chapels and wells;"⁴ the laws against brewing upon the Sabbath;⁵ the law forbidding a deposed preacher to speak;⁶ the law against "the profanation of the Lord's day by the travelling of the stage coach";⁷ and the law against "idle loyterers".⁸

Of course the most common task of the civil authorities was to apply penalties to the scandalous persons bound over to them by the church. In 1697 the Synod of Fife minuted

¹ Synod of Galloway, 21 October 1696. MS.

² Synod of Lothian and Tweeddale, 8 May 1696. MS.

³ Ibid., 5 November 1696.

⁴ Records of Commission of the General Assembly, 4 December 1706. MS.

⁵ Mitchell, Inverness Kirk Session Records. Page 71.

⁶ Records of Commission of the General Assembly, 13 November 1718. MS.

⁷ Synod of Lothian and Tweeddale, 2 November 1720. MS.

⁸ Synod of Galloway, 20 October 1696. MS.

these words.

Anent scandalous persones within the congregations of the bounds of the synod. It was proposed by one brethren whither kirk sessiones might give up the names of such scandalous persones to the Justices of Peace. The synod recommends to every presby wt in their bounds to do yr in as shall be most expedient and edifying.¹

Slightly less than one out of every hundred cases in the manuscripts examined were handed over to the civil authority. Every kind of disciplinary case was handled. Kinloch Kirk-session handed Elsneth Angus over to the "session baillie for civil punishment" for swearing.² Jannet Hogle of Kirkealdy's offence was in saying "she would go to the divil for asends".³ Jean Reid of Aberdeen's was in saying "the blood of my soul will be required at your hand."⁴ They were both cited to the magistrate for civil punishment. Both the Presbytery of St. Andrews⁵ and the Presbytery of Wigtown were directed by their respective synods to turn blasphemers over to the "civil magistrat to punish him as law will".⁶ Barbara McVey of Carriden who called a neighbour a witch,⁷ and Christian Harrow of Canisbay who accused a man who had purged himself of fornication with her; both were "delivered over to the civil magistrat to be punished as a willful slanderer."⁸

¹ Synod of Ayr, 8 April 1697. MS.

² Kinloch, 23 October 1698. MS.

³ Presbytery of Kirkealdy, 21 August 1701. MS.

⁴ Presbytery of Aberdeen, 2 September 1697. MS.

⁵ Synod of Ayr, 6 April 1693. MS.

⁶ Synod of Calloway, 18 October 1720. MS.

⁷ Carriden, 5 April 1698. MS.

⁸ Presbytery of Caithness, 3 October 1716. MS.

Breach of the Sabbath was punished by the civil authorities.

1697, the millers on the water of Leith, for keeping their mills going on Sabbath, are referred to the civil magistrate to be punished; 1699, Henry Nisbet, and John Paterson for drinking in a public house on Sabbath, rebuked and fined by the magistrate.¹

In the case of John Reid, John Malcolm, William Vertier, James Young and James Black who were guilty of drunkenness on the Sabbath; the Presbytery of Paisley applied "to the civil magistrate for yr corporall punishment".² John Bruce of Dunnet³ and three men and two women from Crawford were also given to the civil authorities for their drunkenness on the Sabbath.⁴

Of course the more serious scandals were also referred to the magistrates. Jean Crum, "chieff acter" among some charmers in Kirkinner Parish, was to be publicly rebuked and if she failed to show signs of penitence she was "to be delated to the civil magistrat to be punished according to her demerit."⁵ Jean Clunie of Carriden⁶ and Agnes

¹Warrick, The Moderators of the Church of Scotland. Page 151.

²Presbytery of Paisley, 4 August 1708. MS.

³Presbytery of Gairdness, 14 July 1703. MS.

⁴Presbytery of Edinburgh, 24 November 1703. MS.

⁵Presbytery of Wigtown, 19 July 1698. MS.

⁶Carriden, 5 December 1693. MS.

Wilson of Auchterderran both guilty of scandalous carriage,¹ Janet Cameron of Wemyss² and James McColland of Kirkcubright both guilty of fornication,³ Margaret Skae of Caithness guilty of incest,⁴ and John McMillan of Kirkcinner guilty of bestiality;⁵ were all given over to the civil authorities.

There were others who found themselves in the magistrates' hands for failing to cooperate with the church. Elizabeth Myre of Arbutnott was given to the civil judge for her contumacy.⁶ John Woodrow and his wife of Cumnock were bound over for their "insolences" against the session.⁷ William Lyosie was turned over to the civil magistrate for cursing before the Session of Carriden who were investigating his relationship with his servant.⁸ The cooperation between the civil and ecclesiastical authorities well might be illustrated by the case of George Moncrief.

This day one George Moncrief son to the deceased Walter Moncrief writer in Perth did in a rude manner thrust himself into the presbyterie after they were engaged in business, offering without liberte asked and given, a paper which he called a proxie from one Mr. Patrick Walker innovator in the worship of God, in the Paroch of Scone who is processsed by the presbyterie for his innovations in worship, and for scandalous practices he is alleged guilty of, empowering him to answer for him. The presbyterie

¹Auchterderran, 13 November 1698. MS.

²Wemyss, 29 July 1697. MS.

³Synod of Galloway, 19 April 1692. MS.

⁴Synod of Sutherland and Caithness, 5 August 1706. MS.

⁵Kirkcinner, 6 April 1713. MS.

⁶Arbutnott, 20 December 1696. MS.

⁷Cumnock, Old, 16 March 1707. MS.

⁸Carriden, 28 November 1693. MS.

being surprized by so insolent and disorderly an attack made by the said Moncrief, the moderator in the presbyteries name discreetly desired him to remove a little untill he should give him the presbyteries mind anent any papers he had to offer, which he refusing, the moderator in the name of the presbytery ordered him to remove, and not disturb them in their business. Yet notwithstanding he arrogantly refused, and throw down his paper taking instruments against the presbyterie in the hands of one Chapman a notar in Perth. Whereupon the moderator in name of the presbyterie took instruments against him in the hands of the presbyterie clerk, protesting that he should be liable for this intrusion upon the presbyterie while about their business, and for his insolent and illegal carriage, as affairs in law: And then the foresaid Moncrief removing, the presbyterie judged that they could not let such wai-treatment pass, done to a judicature of Jesus Christ established by law, without taking notice thereof for the tenor of others. And therefore they appoint some of their brethren ... to go to the Magistrates ... humbly to desire of them the said Moncriefs wai-treatment of the presbyterie ... may be redressed.¹

One of the effective ways in which magistrates and session worked together was in the appointment of "session bailies". In 1696 the Ayr Presbytery minuted that "each minister in the Presbytery is to use his endeavours to have a magistrate in their Paroch elected by the Session, having deputation from the Sheriff according to law." At about the same time the Synod of Glasgow and Ayr had passed an act to the same effect.² How this might work is illustrated by this process initiated by Inch Kirk-session.

This day Mr. Wilson produced a reference from ye Session of Inch bearing yt David Caven tenant in Ochchocher in ye sd paroch being accused before yt sd session of drunkenness and fighting

¹Presbytery of Perth, 13 February 1710. MS.

²Wagar, Old Church Life in Scotland. Page 308.

upon ye Sabbath day yt ye sacrament of ye Lords
supper was last administered in ye sd parish,
and he confessing his sins and being rebuked for
the sd vices and profanation of the Lords day and
being apted to compear before ye congregation
for ye sd scandalis, he did abuse the whole
session, threatening them, and frequently say-
ing yt he did not value the sd session more
than the dirt of his feet, and absolutely refuse-
ing to comply wt the aptment saying yt he had a
master yt would not suffer us to get his will of
his tenants, and yt had given us a sufficient
check for meddling wt them already and would also
take his part and defend him, whereupon ye sd
session did referr ye whole to ye Presby of
Stranraer and summons him to compear before ye
presby this day, qch reference being read and consid-
ered was sustained and the sd David being called
compeared and confessed the whole accusations
contained in ye reference and declared his
sorrow for ye bad language he had given the
Session of Inch but withall refused to obey yr
aptment, whereupon ye presby did recommend him
to the shriff to secure him till he gave bond
and caution to satisfy ye Session of Inch for ye
abuses he had done, and the sherriff being present
did presently order him to prison and engaged
he would cause him give full satisfaction to ye
Session of Inch, whereupon the presby did advise
the Session of Inch to cause him compear two dayes
before the Congregation of Inch for his drunken-
ness and Sabbath breaking, and two for his con-
tumacy and abusive language to ye sd session.¹

Thomas Morer in 1702, made the comment that the magistrate
was present "to give 'em Countenance, inforce their Acts,
and awe sawy offenders". He further stated the opinion
that this arrangement took some of the "Odium" off the
church and made its "censures more terrible".²

Not only were the civil authorities called upon to
provide session bailies, but in 1699 the Presbytery of Ayr
encouraged their sessions to apply to the appropriate

¹Presbytery of Stranraer, 2 August 1704. MS.

²Morer, A Short Account of Scotland. Pages 47-48.

authorities,

to relieve them of their civiliser's function by appointing censors in place of elders 'to go about, visit, and delate delinquents for cursing, swearing, drunkenness', &c., on weekdays and sabbath alike.¹

In 1695 the Inverness Kirk-session appointed that four of the "uplifters of the Collections", two in the morning and the other two in the afternoon, to go through the town "with two of the borrow officers" in search of scandalous persons.²

There were areas where the work of the civil and ecclesiastical courts was not expected to overlap and in 1691 the synod of Lothian and Tweeddale "found it convenient to recommend to all presbyteries not to meddle in civil penalties but to refer the same to the justices of peace or other judges competent".³ On the other hand in 1709 the Presbytery of Garrioch received a letter from the justices of peace "quin they promise all concurrence for suppressing vice & immorality & yt they will not meddle wt yt of delinquents penalties qch ye kirk session" might require.⁴

Relations were not always so cordial.⁵ When the Commissar of Wigtown ordered a slanderer "to stand at the

¹ Story, The Church of Scotland, Volume V. Page 478.

² Mitchell, Inverness Kirk Session Records. Page 37.

³ Synod of Lothian and Tweeddale, 6 May 1691. MS.

⁴ Presbytery of Garrioch, 4 March 1709. MS.

⁵ Monimenta Almae Universitatis Glasguensis, Volume II. Page 422.

In March of 1721 the Faculty of the College of Glasgow protested to the magistrates of Glasgow about the examination of and sentencing of two students in the Greek Class. The Faculty jealously guarded their own and sole right to discipline students.

church door upon a Lord's Day with a paper upon her breast bearing her crime", the parish minister at the direction of the session protested that "the censure is purely ecclesiastical and because the Commissar being a judge merely civil hath no power to inflict the same upon the Sabbath day in such a place".¹ The Assembly's Commission sought the advice of the Lord Advocate as to what could be done in

the case of the Commissar Depute of Zetland his admitting a woman who ultroneously offered herself, to give her oath of purgation before him as to her sin of adultery, and reckoning it a dangerous encroachment upon the discipline of this church.²

In 1708 the Lords of Justiciary summoned some of the session clerks within the synod of Glasgow to appear before them with their session records. The synod expressed the view that although ministers could be called upon as witnesses, "they ought not to declare confessions made unto ym, nor ought they to give up yr records to ym".³

*** *** ***

In 1712 Parliament passed a toleration act which was to change the face of church discipline in Scotland. It was entitled

An act to prevent the disturbing those of the Episcopal Communion in that Part of Great Britian called Scotland in the Exercise of their Religious Worship and in the use of the Liturgy of the Church of England and for repealing the Act passed in the Parliament of Scotland intituled Act against irregular Baptisms and Marriages.

¹ Synod of Galloway, 29 May 1706. MS.

² Records of Commission of the General Assembly, 29 May 1724. MS.

³ Brand, "Memoirs". MS.

This act of toleration stated that the Episcopalians could worship under regularly ordained pastors provided the doors of their chapels were not locked. There were to be no penalties imposed for their so doing. All baptisms were to be registered with the parish church; marriage banns were to be proclaimed in both Episcopal and parish churches and the parish ministers were obliged to proclaim them. All acts relating to the Sabbath and prevention of profaneness were to be considered as still in force. While the act was not to protect papists or atheists, a penalty of one hundred pounds sterling was to be imposed on those who disturbed Episcopal meetings. As far as the magistrates were concerned, they were not to hinder such meetings, there was to be no civil penalty for excommunication, and they were prohibited from compelling attendance at church judicatories. The act ends by stating that all ministers who fail to pray for the Royal House will be fined.¹

The kirk had sent her best men to London to fight against the bill. They presented a petition against it and declared it was against the Articles of Union and would weaken church censures. All of this was to no avail as the act was passed by an overwhelming majority in both Houses of Parliament. By providing that no civil pain should follow excommunication it limited censures to

¹The Public General Statutes Affecting Scotland, Volume II,

its effect on a man's soul. "The power of the sword was forever separated from the power of the keys."¹ In examining the records of twenty-eight kirk-sessions for which minutes are available for an equal number of years before and after the passing of the Act, one finds that sixteen kirk-sessions had fewer cases after the Act of Toleration was passed. Out of seventeen similarly selected presbyteries eleven had fewer cases.

It would be incorrect to imagine that the problem of enforcement began with the passing of this act in 1712. As early as 1696, it was intimated to the Synod of Dumfries that Patrick Johnston was to be excommunicated. He had refused to purge himself of a suspected adultery, claiming to be of another communion, and had fled to Edinburgh.² In Perthshire in 1709, Alexander Lindsay refused to give satisfaction for fornication in the parish church. He claimed to have already done so in an Episcopal Church.³ Five years previously "the General Assembly considering that some persons when challenged for scandall, do turn penish, or pretend to do so, to evade censure" ordered that the greater excommunication be passed against them after attempts to reclaim them had failed.⁴

It is also true that all through the period there had been some problems in getting cooperation from some civil

¹Cunningham, The Church History of Scotland, Volume II, Pages 229-231.

²Synod of Dumfries, 16 December 1696. MS.

³Presbytery of Perth, 23 November 1709. MS.

⁴Registers of Acts of the General Assembly, 27 March 1704. MS.

authorities. South Leith Kirk-session complained that the guard refused to give assistance to the constables or session members "upon occasion of peoples curseing or swearing or profaneing of the Lord's day".¹ The Presbytery of Stranraer's problem was that the sheriff was hindering the parish judge from enforcing the acts against profaneness.² The 1706 Assembly noted that some judges refused to put "the lawes relating to penny-brydals in execution".³ The Synod of Galloway was dissatisfied with the justices of the peace for failing to stop the Edinburgh to Wigtown post from traveling on Sunday.⁴ The magistrates of Elgin caused quite a stir by their "unparalleled contempt of the fast." They themselves had been absent from the ordinances on the day of the fast, and had fined others who had observed it.⁵ Daniel Defoe writing in 1708 said that

the Nobility and Gentry very often live in defiance of Ecclesiastick Judicatures and Process, even in the professed and avowed Commission of flagrant Crimes, such as blasphemous Swearing, open Drunkenness, Fornication, and even Adultery itself;⁶

because the civil authorities were not enforcing ecclesiastical discipline. The church was well aware of the fact that the passage of an act of toleration would mean a

¹Presbytery of Edinburgh, 29 April 1702. MS.

²Records of Commission of the General Assembly, 20 July 1704. MS.

³Registers of Acts of the General Assembly, 13 April 1706. MS.

⁴Synod of Galloway, 19 October 1708. MS.

⁵Synod of Moray, 27 October 1709. MS.

⁶Defoe, History of the Church of Scotland. Page 324.

wide-spread adoptions of such an attitude as the above. As early as 1703 the Commission of Assembly formed a committee to list the arguments against such an act in case the parliament should introduce one.¹

After the act was passed in 1712, scandalous persons made good use of its provisions. There was the case of

John Wright of Kersale under discipline for fornication, who is not only contumacious to discipline, but also has written, a very contemptuous and insolent letter to the minister and Session of Airth, before whom the scandal depends, wherein he disclaims and disowns communion with this church, and villipends and condemns the sentence thereof.²

William Balmain of Forteviot, a slanderer, deserted the communion of the Church of Scotland.³ In 1720 a Bellie woman escaped discipline by joining "the illegal English service meeting in Gordon Castle".⁴ At Cloish James Pearson, a fornicator,

protested that he not being of the Communion of the established church of Scotland was not lyable to the censure of any of the judicatories of this Church upon the account of the Tolleration Bill, that the scandal was judged, and he had satisfied discipline already amongst those of his own communion, and thereupon took instruments.⁵

John Robson of Norbattie who broke a fast day declared he "had no scruple for his part to work because he own'd no

¹Records of Commission of the General Assembly, 12 May 1703 - 19 May 1703. MS.

²Ibid., 11 March 1713.

³Presbytery of Perth, 19 May 1713. MS.

⁴Henderson, The Scottish Ruling Elder. Page 140.

⁵Cloish, 21 June 1724. MS.

pastoral relation to Mr. Chrystie".¹ The Presbytery of Shetland complained to the Commission that not only were witnesses refusing to appear, but for delating offenders "members of sessions are prosecuted before the justices of the peace as calumniators, for carrying on such prosecutions".² The synod of Dumfries noted that scandalous persons were "declining to appear before our judicatories upon pretence that they are not of our communion."³ In 1717 the General Assembly sent a deputation to the court to seek the restoration of the laws by which ecclesiastical judgments were enforced by civil powers. This attempt was, of course, a failure.⁴

Other attempts were made to re-establish the old system of cooperation between church and state. In 1723 the Ayr Presbytery asked the sheriff if he would appoint session-bailies in those parishes which did not have them. In reply the Earl of Loudoun "advanced some difficulties he had".⁵ The Commission of Assembly had more success with Sir Robert Menro Sheriff Principal of Ross-shire. He consented to appoint bailies "for encouraging of ministers and suppressing of vice and immorality".⁶

In some other ways a cooperation between the civil and church courts continued. For example the magistrates con-

¹ Synod of Moray and Teviotdale, 27 October 1728. MS.

² Records of Commission of the General Assembly,

16 August 1728. MS.

³ Synod of Dumfries, 13 October 1730. MS.

⁴ Edgar, Old Church Life in Scotland. Page 309.

⁵ Story, The Church of Scotland, Volume V. Page 511.

⁶ Records of Commission of the General Assembly,

9 March 1727. MS.

tinued to enforce such laws as those against Penny-Weddings which were acts both of the Parliament and the General Assembly.¹ And when John Blaw, a suspected fornicator, refused to appear before the Kirk-session of Culross, and the Presbytery of Dunfermline; he was, with the help of the Duke of Atholl, summoned before the Sheriff Court of Perth "for contumacy to the judicatories of the church, and by which he omitted himself to appear before the presbytery ... under the penalty of fifty pound Scots".²

All through the period from 1690 to 1730 there was a certain amount of cooperation between the civil and ecclesiastical authorities. Although the passage of the Act of Toleration lessened this cooperation, it did not eliminate it. Both powers worked side by side to discipline the lives of the people, and expected the help and cooperation of the other.

Having taken a look at the role of the civil powers, we will consider the legal aspects of church discipline in the following chapter.

¹ Registers of Acts of the General Assembly,
22 May 1719. MS.
² Ibid., 22 May 1722.

CHAPTER FOUR

The General Procedures

The first chapter of the Form of Process outlines the general approach to, and the philosophy of ecclesiastical discipline. It is pointed out that Christ instituted a government for His Church and called some to be its governors; that it is agreeable to the word of God that laymen join in the labours of the judicatories; that discipline is both necessary and good for the church in preserving its purity; that only those things declared censurable by the word of God or by an act of the church can be grounds for a process, and then only within five years of the scandal; that the judicatories have the power to convene all persons necessary for the examination of an affair; that scandals should be examined by the judicatory in whose province they are committed; and that ministers are only liable to the superior judicatories of the church.

The second chapter of the Form gives sixteen points as guides to be used in carrying on processes. 1. Kirk-sessions are to consider any information they receive, and if possible remove the scandal by a private admonition. 2. When information is brought in to a judicatory, they are to consider whether or not it is proper for them to enter upon or if it should be prepared for a higher authority

3. All persons cited before a judicatory are to receive a summons, made before two or three witnesses and outlining the process, forty-eight hours before hand. 4. Sometimes it is more fit that a person be spoken to privately before the process is begun. If the party cited does not appear then a second and then a third citation are to be given. If they still do not appear, the person is declared contumacious. 5. All citations apart from acts are peremptory, and if instructed, infer contumacy if not obeyed. 6. In the case of a contumacious person, the judicatory may think fit to examine the scandal before they censure him for contumacy. 7. If the party appears, he is to be informed of the cause and given a list of the witnesses. 8. If the party cited is found to be innocent, then the informers are to be "noticed, for either their calumny or impudence". 9. Witnesses are also to be given up to three citations and then declared contumacious; or if so desired after two citations, application may be made to the civil magistrate to cause their appearance. 10. The defendant may object against witnesses, and if the objections are relevant then the witness is to be disallowed. 11. In all events, witnesses are to be purged of ulterior motives. 12. Witnesses are to be examined before the accused who may have questions directed to them. 13. The accused can call witnesses in defence who may acquit him by providing an alibi, for example. Once the scandal has been proven however, acquittal can only come from defence witnesses who give evidence of extenuating circumstances consistent with

the statements already taken. 14. The clerk is to mark, and the moderator subscribe the depositions of those who cannot write. 15. After the examination is completed, and all outsiders removed, the judicatory is to consider the case. 16. If a scandalous person absconds, he is to be cited first from the pulpit of his parish church and then from the pulpits of all the kirks of the presbytery. If he still does not appear he is to be declared fugitive from church discipline.¹

In order to ensure that the word of God and the acts of the church were being kept, the elders were very diligent in the oversight of the people. The parish was divided into districts, each one to be supervised by a particular elder who was to report on any scandals within his area.² Both the Synod of Glasgow and Ayr and the Presbytery of Irvine directed their elders to enquire into the habits of family worship within their districts and to deal privately with the scandalous.³ The elders of Inverness in 1720 and again in 1724 were directed to visit the markets on Friday "in order to observe those who curse or swear".⁴ And in 1707, 1712, and 1721 the elders of Inverness were appointed to go through the streets on the Sabbath to "observe and reprove abuses".⁵ The members of Crathie Kirk-session were "to take notice of the people that scandalously stay out in the Kirkyard in time of sermon discoursing

¹For the exact words of the Form see Appendix A.

²Waggon, Old Church Life in Scotland. Page 234.

³Story, The Church of Scotland, Volume V. Page 480.

⁴Guthrie, Inverness Kirk Session Records. Page 143.

⁵Ibid., pages 36, 143-144.

about their worldly affairs;¹ and the members of the South Leith Session were to "observe who are on the streets, otherwise prophaneing the Sabbath by drinking".² "At Oldhamstocks in 1706 an elder searching for unnecessary withdrawers from ye ordinances' surpris'd a man with his arms about a woman's neck."³ The South Leith "searchers" appropriated the plaids or shawls of women found breaking the Sabbath.⁴ The elders of St. Cuthbert's, Edinburgh, warned that all who kept behind locked doors "shall be holden as guiltie".⁵

The following excerpts, one from the Inverness Kirk-session minutes and the other from Kenwick's charge to ruling elders gives us an idea of the duties and responsibilities placed upon them. The minute from Inverness deals with the subject of "elder's rounds".

The session unanimously agreed on the following distribution of their respective Bounds of the Town to the several Elders afternamed, in reference to which the Session recommended to them these Articles, viz.:- Primo. That Elders strictly inspect the Christian Behaviour of persons and Families in their said Bounds use their utmost Intrest with Heads of Families, to perform the worship of God daily in their Houses, and take pains to instruct their Domesticks in the first Principalls of Religion, Exhort them to the Sanctification and attendance on publick Ordinances.

¹Stirton, Crathie and Brecon. Page 239.
²Warwick, The Moderators of the Church of Scotland. Page 184.
³Henderson, The Scottish Ruling Elder. Page 125.
⁴Robertson and Swan, South Leith Records. Page 1.
⁵Lorimer, Early Days of St. Cuthbert's Church Edinburgh. Page 158.

2do. That they Diligently Inquire after the Testimonials of all New comers to any house or family within yr respective Bounds, and present to the Session a List of such as want Testimonials, and of such as are Idle, and have no employment. That they may use the methods most proper in that case.

3to. That they take notice of the Circumstances of the poor in their Bounds, and acquaint the Session who are the most Necessitous and proper objects of Charity therein, and see that no Countenance or Support be given to such as are Idle, tho' able to work, or such as are Vicious or profane.

4to. That such in their Bounds as refuse to hearken to their admonition for preserving peace and good order in their Families and Neighbourhood, they inform the Minister of their Quarter for the time therewith, that if their Conjunct Admonition prevail not for the Ends above said, such disorderly persons may be delated to the Session and Censured, as the Cause shall deserve.

5to. Over and above what may afterwards be concerted by the Magistrates and Session for perambulating the Town in General to prevent the profaning of the Lord's Day. It's hereby recommended to the Elders to take Notice of their own Bounds on that day that there be no open abuses or Idle Crouds or Wandering of People on their parts of the Streets.¹

The quotation from Newick's Charge deals more generally with the relationship of the elder to ecclesiastical discipline.

But because the Government, and more frequent Duties of ruling-Elders, lieth (for the most Part) in the exercise of their share of the Power of censuring Scandal and scandalous Persons, and trying and admitting of Penitents: Therefore, I show you somewhat of the Right Way of following your duty in these Things. As, 1st. Ye must exercise your Power over all Persons within your charge indifferently and impartially; over the Rich as well as the Poor, the High as well as the Low, your Kinsfolk as well as others, Jan. 11. 1.

2d. Ye must exercise your power towards all

¹ Mitchell, Inverness Kirk Session Records. Pages 135-136.

Sorts of Scandals and Offences, 2 Thess. iii. 6. The Acts of our Church do appoint, that, who-
soever it be, that might spot a Christian
Congregation, ought not to escape either
Admonition or Censure. Therefore, ye must
take Notice of all Scandalous Omissions
and Commissions.

3d. Ye must not bring in civil Questions and
Behaves before the Assemblies of the Church,
John xviii. 36.

4th. Ye must observe this Order in taking No-
tice of Offences: If the Offence be private,
and known but to a few, then follow the order
prescribed unto you by Christ, Matth. xviii.
15, 16, 17. If the offence be publick and
open, then is the Offender, without previous
Admonition, to be Related to the Session,
1 Tim. V. 20.

5th. In these Relations, you must not, upon
every Humour, or Jealousie, or Suspicion, bring
Men to be questioned publickly, as scandalous
Walkers; but ye are first to make diligent and
prudent Enquiry about the Truth of the Matter,
and to see if it can be proven by Witnesses; Or,
if the Scandal thereof be common and flagrant,
or attended with pregnant Likelihoods, and Presump-
tions of Truth, before ye bring it to publick.

6th. In the matter of Relations and Censure,
ye must, in the Fear of God, and Sincerity of
your heart, take heed, that Fear, or Favour,
or Solicitations, or Threatnings, or Gifts, or
Bribes, make you not wink at the Faults of any;
and that Passion, or Malice, or private Quarrels
and Particulars, make you rip up, relate, or con-
sure the Mischance of any: And also, that ye
carry your selves with Tenderness, Compassion and
Moderation towards the Offender, Gal. vi. 1.
that ye may commend your selves to every Man's
Conscience, 2 Cor. iv. 2.

7th. Ye must not use, nor inflict any civil
Punishment upon Persons convicted of Scandal:
The Kingdom of Jesus Christ and the Censures
thereof are spiritual, and not of this World,
John xviii. 36.

8th. Ye must not use the Censures of the
Church as a bodily Punishment, or Penance
to satisfy for Sin; but, as a Spiritual Med-
icine, for humbling and gaining of the Soul:
All Church-Censures, even Excommunication it
self, are ordained of God for this End, 1 Cor.
v. 5. The word Satisfaction, may admit of a tolerable
Construction in Church-Censures, in order to
the removing of scandal; but this being so much
abused in the Popish Church, and the hearts of

Men being so prone to turn Gospel-Repentance into a mere legal Penance, and to conceive, that by a mere outward Penance, and to Obedience to the Censures of the Church, the Guilt of their Sin is done away before God; Therefore ye should carefully shun every Thing that may give occasion to the fostering of this pernicious Opinion, and take due pains to instruct the Offenders, in the true Nature and Ends of the Censures of the Church.

9th. Ye must take pains upon Persons convicted of Scandals, to bring them to Repentance, and to have them fitted to evidence and declare the same in publick, before the Congregation, that so the scandal may be removed.

10th. Ye must not desire, or appoint, any to profess Repentance before the Congregation, until the Signs thereof appear in them: For, it is but a mocking, to put such to publick repentance, who neither understand what Sin is, what Repentance is, what Grace is, nor by whom God's Favours and Mercies are purchased: For this, see what is set down in the Form and Order of publick repentance, appointed by the Assembly 1567.

Lastly, When the Signs and Evidences of unfeigned Repentance do appear in these who have offended; ye must shew yourselves ready and willing to receive them, with all tenderness and Compassion, and to forgive and comfort them, and confirm your Love towards them, 2 Cor. 11.7,8.

Some have seen this system as being both inquisitorial and tyrannical".

The session inquired into all migrations into and out of the parish ... Elders did not wait for scandals to be reported to them, they searched them out ... Nothing was too great and no offence too petty for consideration ... They called to answer before them heads of families, lairds, and even elders, for entertaining company too late at night in their houses; but especially were they ever on the lookout for Sabbath desecration.²

On the other hand in 1701 the Synod of Sutherland and Caithness minuted "that the discipline and censures of Christ's house be impartially executed upon all without

¹ Shields, The Life and Death of James Menzies. Pages 220-222.
² Provand, Puritanism in the Scottish Church. Pages 167-170.

respect of persons",¹ and in 1715 the Alvie Kirk-session warned its members "to be very cautious about delating persons and not bringing in every trifling tale that is told to the country, founded very oft on ill-will".²

It should be said that not all the cases of discipline were initiated by the members of the kirk-sessions. In 1702 the searchers of Ayr Parish Church reported that they "saw no irregularities, nor abuse committed when they were making search through the town".³ In the case of women becoming pregnant through fornication, for example, their condition was a self-evident confirmation of their scandal and there was no need for the elders to "spy" upon them. Christine Bore of Killoonquhar, who was guilty of scandalous carriage, was delated by her father who seemingly wanted assistance in disciplining an unruly daughter.⁴ The case of John Murray of Gladsmair, who was censured for drinking, swearing, fighting, and abusing his wife, was brought in by Mrs. Murray. She also obtained an order prohibiting him from seeing Isabel Cornwad.⁵ Indeed there were some who volunteered to undergo discipline. In 1703 Margaret Wilkie volunteered to satisfy for an adultery before the Presbytery of Cupar.⁶ The following was minuted in the Manchain Records in 1705. "Quo

¹Synod of Sutherland and Caithness, 5 August 1706. MS.

²Henderson, The Scottish Ruling Elder. Page 109.

³Kelkie, The History of Ayr Parish Church. Page 149.

⁴Killoonquhar, 20 May 1706. MS.

⁵Gladsmair, 22 October 1704. MS.

⁶Presbytery of Cupar, 20 July 1703. MS.

die the session met, J.P. and A.A. from the Parish of Ochiltree supplicate the sessions yt they would receive ym to the stool."¹ At Inverness in 1707

It was represented that William Martine was come a long journey from the Isle of Sky on purpose to satisfie the discipline in this place and that without any citation he was voluntarily attending.²

Another way in which delinquents were brought to justice involved the use of the "testificate". When a resident leaving the parish came seeking a certificate, he was first made to satisfy discipline if he were a delinquent. All kinds of cases were disciplined in this way. Barbara Low in Harry had to satisfy for slander before she left for Dundee.³ Isobell Low of Kemnay gave satisfaction for cursing the laird before she was granted "a negative testificat".⁴ When the barber of Dailly wished to leave the parish, his request for a testificate was refused until he was rebuked for "profaning the sabbath by taking off beards".⁵ John Sheritt satisfied for a breach of the Sabbath in "carrying home shoes" before he received his testificate.⁶ When James Biches of Manor came for his testificate he was censured for his antenuptial fornication.⁷

All who moved from one parish to another, either to

¹Edgar, Old Church Life in Scotland. Page 302.

²Witchell, Inverness Kirk Session Records. Page 345.

³Harry, 17 February 1717. MS.

⁴Presbytery of Carleoch, 2 March 1704. MS.

⁵Turnbull, A South Ayrshire Parish. Pages 90-91.

⁶Carbuthnott, 4 July 1698. MS.

⁷Manor, 13 June 1714. MS.

reside or for a temporary stay, had to have testimonials detailing their former good behaviour. In 1691, 1718 and 1723 the Kirk-session of Inverness ordered that in all the burgh testimonials should be produced. All residents, both new and old, had to meet with a committee of the session which placed their names in a book kept for that purpose.¹ In October 1702 the Deerness Kirk-session appointed their members to give in a list of all servants without testimonials who were not born in the parish. Two months later a more general intimation was made "appointing all persons living in the parish, not being natives of the parish, to procure testimonials from the places where they were born, or where they came from last".² Here are two examples of such testificates from the Airth Parish records. "The Session appointed a certificate to be given to Margaret Pittilloch bearing that during her abode here she behaved herself free of publick scandal." Also a testificate was given to Andrew Volun "bearing that he was some years a souldier befor he came hither, and that during his abode here he was not under any publick scandal made known to the session".³

It was very essential to be able to produce a certificate. A man in Balmerino Parish found he could not get

¹ Mitchell, Inverness Kirk Session Records. Pages 36, 146-147.

² Proceedings of the Orkney Antiquarian Society Volume IX.

³ Meikle, The History of Airth Parish Church. Page 156.

carried without a testimonial.¹ William Baxter of Carriden was sent to the justice of the peace for not producing a certificate.² Isobell McLeod, guilty of "indecent posture", was sent to the civil authorities "for such corporal chastisement" as the law might inflict when she failed to produce a certificate.³ Others were banished.

On October 27, 1724, two women who had returned to Inverkeithing without any record of their behaviour during the period of their absence, were "peremptorily enjoined to get testimonials for the time they have been out of this parish, against this day fortnight, with certifications if they be not sufficiently provided with them against that time that the Sessions will apply to the Magistrates to get them removed out of the parish".⁴

Banishment was also used to rid the parish of undesirable characters.⁵ Even to be associated with those who lacked testimonials was to court censure. Margaret Waddell of Northwick received a sessional rebuke for taking in a pregnant woman who was without a certificate.⁶ William Watt of Banchory-Ternan received a sessional rebuke as "he had in his house a person wanting a certificate".⁷

It is not surprising that the churches were able to use the refusal of testimonials as a threat to keep the parish-

¹ Campbell, Palmerino and its Abbey. Page 443.

² Carriden, 26 December 1699. MS.

³ Mitchell, Inverness Kirk Session Records. Page 164.

⁴ Stephen, The Story of Inverkeithing and Hemyth. Pages 81-82.

⁵ Carriden, 5 December 1693. MS.

Walston, 2 November 1718. MS.

Achterderran, 13 November 1698. MS.

⁶ Northwick, 7 November 1697. MS.

⁷ Banchory-Ternan, 26 February 1704. MS.

ioners in line. Galston Kirk-session declared that all who neglected "the catechising" should be refused testificates.¹ When John Watson broke his oath to the incorporation of girdlesmiths by working in other towns, his testimonial was "torn".² Fear of such action undoubtedly encouraged many to keep the discipline of the church.

Others tried to circumvent the problem. Alexander Abercrombie of Kilconquhar,³ Patrick Bonnie of Dron,⁴ Andrew Russell of Edinburgh,⁵ and Charles Linlithgow were all convicted of counterfeiting certificates.⁶ Few were so bold as Mario Welsh.

Being asked if she would yet apply to the kirk session of Timmerie for a testimonial she answered that she would not seek for a testificate from that session or any other and with a great deal of impudence she declared that she was too much troubled by the Session of Stranraer and the presby and that she would answer no more of their appointments.⁷

It was not only by way of testificates that delinquents were brought voluntarily before the judicatories. They were often apprehended when presenting a child for baptism. After this fashion Robert Tompiston of Kilmaurs satisfied for theft,⁸ John Ritchie of Mearns for deserting the ordinances,⁹ Robert Corbie of Newryes for

¹ Story, The Church of Scotland, Page 481.

² Beveridge, Gilgoss and Tullisallen, Page 116.

³ Kilconquhar, 25 January 1706. MS.

⁴ Dron, 17 July 1723. MS.

⁵ Presbytery of Edinburgh, 11 August 1703. MS.

⁶ Acts of General Assembly, 1696, Session 12.

⁷ Presbytery of Stranraer, 4 July 1715. MS.

⁸ Kilmaurs, 30 December 1702. MS.

⁹ Mearns, 11 May 1722. MS.

breach of sabbath,¹ Charles Stuart of Newtylo for drunkenness and swearing,² and Andrew Loustone of Kinglassie for antenuptial fornication.³ Breach of Sabbath by Helen Murray and Margaret Mather, and fighting with her neighbour by Helen Low, all of Menmuir, were disciplined for their respective scandals when they applied for communion tokens.⁴ Perhaps it was to escape discipline for some offence that Elizabeth Liddel of Walston stole a communion token.⁵ The following excerpt from Boston's diary shows how this method worked.

On the 7th of June (1724) the sacrament was celebrated, I had had much weary work from the family of J.A., he having repeated his abominations, and another of that family having fallen into fornication. Mrs.A., spouse to the said J., had much ado to bear my proceedings in these odious cases; but her husband being a peaceable man, things were kept tolerable betwixt them and me. But he dying in February this year, she of a long time came not to church. Having come at length, some time before the sacrament, she on the fast-day I think, desired of me a token to partake. Now a woman had gone out of the family, and absconded, being famed to be with child; and another had deposed that she told to Mrs.A. that she thought the party aforesaid was with child, the deponent and she being fellow-servants, and lying in one bed together. This relating to the time before the absconding; I did, upon the occasion of demanding the token aforesaid, lay this matter before her; whereupon she, taking it heinously, came not to the sacrament, and all along to this day hath turned her back on the public ordinances of the church.⁶

¹Monymy, 4 May 1701. MS.

²Newtylo, 23 April 1721. MS.

³Synod of Fife, 29 September 1697. MS.

⁴Monmuir, 17 August 1721 - 25 July 1723. MS.

⁵Walston, 23 December 1722. MS.

⁶Morrison, Memoirs of Thomas Boston. Page 373.

When thorough investigations were needed to substantiate suspected scandals, methods were used which would hardly be approved today. Those who were suspected of being witches were searched by the "prickers" who through the use of pins hunted for an insensible mark upon the unfortunate's body which would confirm their suspicions.¹ It was however in cases involving sexual scandals where the investigations were the most thorough. Midwives were required to report the births of illegitimate children and were rebuked if they refused to do so.² They also helped to establish the identity of the child's father.

In the records of Manohline Kirk Session the following minutes occur; - 1692, March 25 ... 'The midwife Margret Wat, being with her in her greatest pains, did challenge her if ever she had ado with any other man, and threatened that she would leave her to die in her pains if she would not tell the truth, and she cried out and wished that she might never be better if any man was the father of that child but J.W.'³

When a child was abandoned, the midwives helped in the search for the mother. In Eastwood in 1729 an older and two women in each district were directed to check the breasts of all the single women.⁴ Apparently everyone did not agree with this method for in 1721 the Fintray Kirk-session minuted:

That the common and usual way of going through the parish and drawing the severale women's breasts does very seldom take effect, and that

¹Murray, Kilmacolin. Pages 110-116.

²Presbytery of Edinburgh, 25 June 1701. MS.

³Story, The Church of Scotland, Volume V. Page 477.

⁴Eastwood, 13 July 1729. MS.

it is attended wt several inconveniences such as the giving offence to some otherwise religiously dispos'd.¹

Houston tried the more personal method of confrontation which was often used.

Dealing with his conscience, I took one of the twins she had brought forth, and holding it before his face, posed him with his being the father of it. Nevertheless he persisted in the denial, though evidently under consternation, his moisture being visibly dried up in the struggle with his conscience. He being removed, I went out and dealt with him privately; and having observed that two of his children he had by his wife, had been removed by death, soon after, or about the time in which, as was alleged, he begot those two adulterous ones, I told him that it seemed to me, God had written his sin in that his punishment. To which he answered that indeed he himself thought so; and so confessed. Being called in again, he judicially confessed his guilt of adultery with that woman, and that he was father on her twins.²

Before the passing of the Form of Process in 1707 the judicatories of the church tried scandals that were committed many years before-hand. Ninian Cassile received the greater excommunication from the Presbytery of Hamilton and was turned over to the civil magistrate for an act of bestiality committed forty-five years earlier.³ Kilmours Kirk-session fined Robert Harper six pounds for an adultery committed thirty years previously.⁴ Another case of adultery twenty-one years old was disciplined by

¹Fintray, 31 May 1721. MS.

²Morrison, Memoirs of Thomas Boston. Page 221.

³Presbytery of Hamilton, 2 May 1693. MS.

⁴Kilmours, 2 August 1699. MS.

the Presbytery of Cupar,¹ Janet Anotgrass of Currie,² Agnes Richardson of Gladenmuir,³ a certain Crabston of Aberdeen,⁴ and Alexander Brown of Kilmours all were disciplined for breaches of discipline more than five years old.⁵ Most of these offences occurred during the period of episcopacy.

With the passing of the Form all scandals over five years old were allowed to "sleep". The case of William Cumming which was heard by the Inverness Kirk-session is a good example. Cumming was guilty of an undisciplined scandal seven years old and needed a testimonial in order to travel to England on business.

The Session did reason at length upon this case, and afterwards came to this conclusion, that he should get liberty to go into England about his affairs, and in regard that he gave very much satisfaction to them by his humble acknowledgement, and that he is now married and hath a family, and these six years past hath behaved very soberly, without offense, and that in regard it is more than five years since this scandal was noticed in this place, and that it might break the young man's credit if it should be brought to publick there, and that a late Act of Assembly imports yt after five years it ought not to be revived again, and considering that the thing is dead here in a great measure, and that the great end of discipline is gained in reclaiming the young man, who appears to be in deep concern about it.⁶

After 1707 there were some instances when old cases were

¹ Presbytery of Cupar, 20 July 1703. MS.

² Currie, 3 March 1698. MS.

³ Gladenmuir, 26 February 1699. MS.

⁴ Presbytery of Aberdeen, 26 May 1698. MS.

⁵ Kilmours, 9 October 1702. MS.

⁶ Mitchell, Inverness Kirk Session Records. Pages 55-56.

disciplined. The Presbytery of Inverary disciplined an adulterary thirteen years old,¹ Cupar Presbytery disciplined a twelve year old fornication case,² and a border line case (five years old) of theft was handled by Carstairs Kirk-session.³ The Form allows for cases that were again "flagrant" to be dealt with by the judicatories. Janet McMalis, fornicatrix, was held liable to discipline for an old case by the Synod of Galloway. They reasoned as follows. "The woman was still under process untill she left the country and was declared fugitive and now she having returned and made confession of her own accord the scandal is new although the fact be old."⁴

Once a judicatory made the decision to deliberate on a particular case, summons were sent out to all involved parties requiring their attendance upon the court of the church. This necessitated, at times, bringing people over long distances, and in this the judicatories cooperated with one another. When Mary McKee fled from the bounds of the Presbytery of Gairloch, they sent enquiries out to the various presbyteries. She was apprehended in the Parish of Calder and an officer of Inverness, who was to receive eight pence for his labour, was appointed to take her to the minister of Kirk-hill "that she may from Parloch to Parloch be Returned to the Bounds of Gairloch".⁵

¹Inverary, 13 February 1717. MS.

²Presbytery of Cupar, 11 January 1709. MS.

³Carstairs, 18 May 1718. MS.

⁴Synod of Galloway, 19 May 1708. MS.

⁵Mitchell, Inverness Kirk Session Records. Page 185.

Two or more witnesses were needed to prove a case. In 1709 the Synod of Galloway acknowledged the "defect" of the Session of Dalry in calling but one witness in the case of Alexander Walsh.¹ When only one witness testified against Margaret Low and John Gordon of Strichen, the charge was changed from fornication to one of scandalous carriage.² When Robert Cunningham of Haddington,³ William Henderson of Paisley,⁴ and George Jameson of Perthshire denied their adulteries, it was all to no avail as several witnesses had testified against them.⁵ The witnesses were examined as to any personal bias. Robert Keriot who was accused of adultery with Marion Grievie objected to her relatives being witnesses at his examination. His objections were over-ruled and the presbytery was ordered to proceed with the case and depose Keriot from the eldership.⁶ The Commission arrived at a different decision in the case of John McCormock, minister at St. Andrews. "The question proposed was, whether Mary Craig, the party with whom Mr. McCormock is said to be guilty of uncleanness, her father, mother and sisters should be admitted witnesses in that cause." The witnesses were disallowed because of the proximity of blood between them and Mary

¹ Synod of Galloway, 16 May 1709. MS.

² Strichen, 18 December 1702. MS.

³ Presbytery of Haddington, 28 October 1707. MS.

⁴ Presbytery of Paisley, 17 September 1712. MS.

⁵ Presbytery of Perth, 25 October 1710. MS.

⁶ Synod of Angus and Mearns, 22 April 1719. MS.

Craig.¹ Cautyre Presbytery brought a case of adultery to the Commission in 1706. The question was whether or not a Roman Catholic servant could be "admitted to bear witness against a Protestant, or if she can be received being the gentlemen's servant". The Commission advised "that in cases of domestick crimes and scandals such as this, witnesses otherwise inhabile may be admitted".²

The examining of the approved witnesses did not always run smoothly. And the accused did not, at times, take kindly to the witnesses. When James Ogilvie of Alyth was charged with adultery, he "did furiously pursue the officer and witnesses, and with a great tree did knock Thomas Bonet, one of the witnesses to the ground, who through his wounds is in very great danger of death".³ And at the hearing of the process itself, some difficulties were encountered. The following minute of the Synod of Fife gives us an example.

The synod understanding that in some parishes within the bounds of this province, where delinquents have been under process for scandals and public immoralities, the Kirk-Sessions have met with very much trouble and contradiction, from persons who had no manner or call to be present or concern that process by compearing with delinquents and judicially owning that they came to assist, the said delinquents objecting against the witness proposing interrogatories to them when upon oath, and urging them to

¹Records of Commission of the General Assembly, 11-12 November 1724. MS.

²Ibid., 17 December 1706.

³Meikle, The History of Alyth Parish Church. Pages 155-156.

give answers thereto, expressly contrary to the synods mynd, and the twentieth paragraph of the second chapter of the form of process intimate to them and using other methods to weaken the hands of the judicatories and to hinder the bringing of offenders to condigne censure. Therefor the synod after due deliberation thought fitt to condemn and discharge and hereby doe condemn and discharge upon pain of censure, the forsaide practices as being in themselves sinful, contrarie to the liberty of church judicatorys and having a tendency to encourage sin, and to harden offenders in their wickedness.¹

And the Synod of Angus and Mearns heard from its presbyteries about contumacious witnesses who when cited "either do not appear or refuse to depone".²

*** *** ***

Often the accused cleared himself by taking an oath of purgation as is set forth in chapter four of the Form. Out of the 1,517 cases of sexual immorality decided upon by the presbyteries whose records were examined, the oath was referred to in one hundred thirty-two instances. The Form of Process gives an outline of the oath to be used, but it was usually modified to suit the requirements of the judicatory concerned. Thus Stobo Church used the following oath upon one occasion.

John N. being called, appeared: to whom the Oath was read, and a copy thereof given to him to consider against the next Dyett according to his own desire, the tenor whereof follows:- 'Whereas I, J.N. hath been challenged of sin, and carnal dealing with M.S. who affirms the same; Wherefor to satisfy God's people, and to remove the scandal, (an Oath being the end of all controversy), I am willing to declare, seeing my Conscience bears me witness, that I am in the matter innocent, and free of offence towards God and men. And

² Synod of Angus 28th September 1776 p. 114-115. MS.

knowing somewhat the terror of the Lord, and how dreadful a thing it is to fall into the hands of an angry God, and that whoremongers and adulterers shall never enter into the Kingdom of Heaven, and that the Almighty God searcheth the heart and tryeth the reins and knoweth well the hidden things of dishonesty, and will manifest in the light what is done in the dark, and judgeth himself on all such as swear falsely by His name, or calls Him to bear witness to a lie, and is able now as under the Law to execute vengeance upon the unclean person, that was to drink of the Water of Jealousy, and if guilty made their body swell, and thigh rott, (Numbers v.22.) and can suddenly kill the liar as Ananias and Sapphira, (Acts v.) and knowing well that this God will not be mocked, and such as would mock have the hands made stronger and stronger (Isa. 28.22.) and knowing that all liars shall have their part in the lake that burneth with fire and brimstone, which is the second death (Rev. 21.8.) and that none such as make a lie can enter into the New City above (Rev. 21.27) and that the Lord Jesus Christ shall be revealed from Heaven, with His mighty Angels in flaming fire, taking vengeance on them that know not God, and obey not the Gospel, and shall punish such with everlasting destruction from the presence of the Lord (2 Thess. 1.8,9.). And withall being persecuted in my heart that he who sweareth hath to swear the Lord liveth in truth, judgment and righteousness (Jer. 4.2.) I do therefore hereby declare before God, Angels and men, Heaven and Earth, under the pain of all the Curses of the Law, and as I would not be set up as a sign and a wonder, and be made with Cain a vagabond in the earth, and as I would not have my name written in the dust, and blotted out of the Book of Life, and so separate from Christ for evermore, I do solemnly swear with uplifted hands by the dreadful Name of the Omnipotent Allseeing God that I am free of any carnal sin with M.S. first or last, and knows not whether she is man or woman but by seeing of her face which to be of truth I subscribe with my hand that it may be kept in record as a standing witness against me if it be not the truth.¹

¹ Gunn, The Book of Stone Church. Page 72.

The judicatories had such a high opinion of the value of the oath that the Presbytery of Kirkcudbright hesitated to proceed with the case of Alexander Gordon who had on his own given an oath in the Kirk of Balmaghie. The synod advised "that the said presbitry should not stop in their procedure upon the account of that ultroneous oath, but rather proceed to the sentence of higher excommunication".¹

Often the judicatories required the oath of a suspect in order to settle a process. This was true in the fornication cases of John Wilkie, writer, in Edinburgh,² the Rev. Meluzies suspected with Isobell Currie and Janet Johnston, his servants,³ Robert Stracton accused by a woman in childbirth,⁴ and Alexander Mill, Episcopal minister at Benholm;⁵ also in the adultery cases of Hugh Donaldson,⁶ Gabriell Alison,⁷ Sir Robert Grierson,⁸ and John Kirks;⁹ and in the case of William Stevenson, saltman in Aberbrothock, who was accused of incest with "his wife's niece".¹⁰

And then on the other hand, there were times when the suspected delinquents requested the privilege of the oath. When William Bell was accused of adultery with Lady Helmain the synod directed the Presbytery of Lochmaben

¹ Synod of Galloway, 17 April 1711. MS.
² Synod of Lethian and Tweedale, 7 May 1696. MS.
³ Synod of Dumfries, 15 October 1696. MS.
⁴ Presbytery of Edinburgh, 27 August 1701. MS.
⁵ Synod of Angus and Mearns, 22 April 1703. MS.
⁶ Synod of Galloway, 20 March 1694. MS.
⁷ Ibid., 16 April 1701.
⁸ Synod of Dumfries, 4 July 1704. MS.
⁹ Synod of Galloway, 20 October 1714. MS.
¹⁰ Synod of Angus and Mearns, 22 April 1703. MS.

to tender the oath of purgation to him as he had requested.¹ The Synod of Lothian and Tweeddale agreed that William Buchanan should be allowed to give his oath as he had offered. "The woman accusing him for uncleanness without any proven presumptions thereof and the woman also not being done fame."² The Forfar Presbytery were advised to deal further with Alexander Jack's conscience as to his suspected fornication and not to hastily admit him to his oath as he desired.³

The judicatories did not always approve the tendering of the oath to an offender. This was the case when it was believed that the oath would not effectively remove the scandal. James Neilson of Colmenell was denied the oath of purgation by the Assembly's Commission.

The said James in his youth, was under the scandal of fornication, and admitted to purge himself thereof by his oath, and that likewise he took into his house after he was in a married state a woman with whom he was convicted of guilt formerly, and farther that she was kept in his house, after his being discharged by the session to do so, and that the Session of Ingh had declared, that his oath of purgation would not remove the scandal of adultery with the said Janet McBride, she having fallen with child when in his house, and after he was prohibited to entertain her there.

James Cockburn of Linlithgow alleged to be guilty of adultery, offered to purge himself by oath from the scandal after one of the witnesses, who had declared that he saw

¹Synod of Dumfries, 9 October 1695. MS.

²Synod of Lothian and Tweeddale, 9 May 1706. MS.

³Synod of Angus and Mearns, 16 April 1718. MS.

⁴Records of Commission of the General Assembly, 17 May 1716. MS.

Cockburn in the act of adultery, had died. "The synod taking yis affair into consideratione judged it not safe for ye presbytery to take yt same oath".¹ A good example of the seriousness with which congregations took oaths and of the refusal to administer an oath when the scandal would not be removed, is found in the records of Kelton Parish.

The minister reporting that when he called William Black and Robert Black appeared before the congregation this day and professed their readiness to purge themselves by their oath of the alledged scandall of theft, and that after he had spoken to them with relation to the nature of an oath and the danger of false swearing and showed how the Lord in a particular manner hath in all ages manifested his displeasure against this sin of false swearing and read the oath to the parties very many of the congregation went out and when he came to desire them to lift up their hands to take the oath which they did many more rushed out of the kirk and many of those who remained did weep bitterly whereupon he desisted and did not administrate the oath to them. The session taking this report to their serious consideration did approve of their ministers conduct and are of the opinion that their purging of themselves would have been so far from removing the scandall that they can doe no more in this affair therefore they resolved to proceed no farther but to leave the same to the determinatin of providence.²

Wodrow in writing to his wife in 1711 states the opinion of the "late Advocate" that the oath of purgation as a part of the process is in the judicatories' hands and can not be claimed by the party.³ We have already seen, however, that suspected parties were allowed to claim the benefits

¹Synod of Lothian and Tweeddale, 4 November 1703. MS.

²Kelton, 8 October 1721. MS.

³McCrie, The Wodrow Correspondence, Volume I. Page 237.

of the oath. On the other hand there were those who refused to take the oath. John Barclay told the Synod of Fife that his reason for refusal was "the repeated imprecations and curses which are found in it over and over again".¹ George Wright had offered to take his oath, purging himself of adultery, before the presbytery. After reading it he changed his mind. Once he started to take it in the congregation but quit halfway through it. He told the Synod of Merse and Teviotdale that he still refused to take it, and they passed the sentence of lesser excommunication against him.² Of course there were occasions when the higher judicatories decided that an oath was not necessary to establish innocence. When Michael Andison was able to present a properly attested affidavit from Agnes Leishman "declaring upon oath that she never had any child ... nor any carnal dealing with him", the General Assembly discharged the presbytery from pressing for his "oath upon the saids alledged presumptions of guilt or to censure him for refusing the same".³ The Synod of Dumfries decided in favour of a committee of physicians and skilled women to decide the guilt or innocence of Samuel Clerk. His wife had given birth to a child a month and three days before her time, which was not surprising as she had been "trampled on by the

¹Synod of Fife, 2 October 1701. MS.

²Synod of Merse and Teviotdale, 22 October 1729. MS.

³Registers of Acts of the General Assembly,
12 April 1706. MS.

beasts in the fold two days before".¹

The most common form of censure employed by the judicatories of the church was the rebuke. It was used in almost all cases, but could be administered in different ways. It could be done privately by an elder or minister at the home of the delinquent.² A rebuke administered in the presence of the Kirk-session was also considered to be private. If the scandals were of a serious nature or if they had been aggravated by circumstances, the rebukes were delivered in face of the congregations.

The sentence of lesser excommunication meant suspension from the sacrament of the Lord's Supper. The lesser excommunication followed a rebuke and was done with the presbytery's approval.³ It was used to indicate that the offence was particularly scandalous and that the offender could not be accepted as a worthy communicant until proof was given of penitence and a reformed life.

The rules governing the censure of the greater excommunication are detailed in chapter eight of the Form of Process. It was to be used only where there had been a manifest contumacy, an obstinate continuance in scandal, or a particularly atrocious scandal. It was not to be used

¹Synod of Dumfries, 15 May 1707. MS.

²Corrigan, 29 June 1692. MS.

Kirkinner, 16 October 1709. MS.

³Cummock, Old, 13 February 1715. MS.

Story, The Church of Scotland, Volume V. Pages 501-502.

in contumacious cases if the scandal were improved, or if the scandal were of a minor nature. All notorious processes were to go to the presbytery, who was to investigate the case, whether or not the delinquent answered its citations. After which, the minister of the local congregation was to inform his people of the state of the process and of the presbytery's intention to proceed to the higher censure. After three such admonitions, with the presbytery having met between each, the pastor was to proceed to public prayers on three occasions for the offender, the presbytery again meeting between each occasion. If the scandalous person remained impenitent the presbytery was to proceed to the sentencing. On the day of the sentencing the minister was to preach on the nature, use and end of church censures; to read the whole state of the process, and to pray for the offender's repentance; then to pronounce the excommunication, shutting the person out from the communion of the church, barring him from its privileges and delivering him over to Satan. Then the people were to be warned to shun all unnecessary converse with the excommunicated person. If at sometime during the service the offender should declare his penitence, then the minister could delay the censure at his own discretion. It was also noted that it might be necessary to obtain the assistance of the civil power.

In 1696 the Presbytery of Inverary took such a course.

Having found the accused

legally guilty of the horrid sin of blasphemy by the depositions of four habile witnesses, and that they gave him respite to this presbytery to see if he would repent and submit to discipline and finding that he seems to be hardened in his sin they have therefore nomine contra-dicente of all prt and having Mr. Gordons and Mr. Pat Campbells consent by writt after invocating the name of God, in the name of the Lord Jesus Christ delivered the same Charles M'Avon to Satan and excommunicate him ...¹

When James Pollock continued in his drinking and swearing after having been placed under the sentence of lesser excommunication for those scandals, the presbytery authorized the Kirk-session of Blantyre to initiate a process of the greater excommunication against him.² The Presbytery of Stranraer

being moved with zeal for the glory of God and the edification of souls & considering that the Lord Jesus Christ the only head & lawgiver of his church hath commanded and appointed such scandalous & contumacious persons to be cast out of the church & communion of Christians and to be reputed as heathens and publicans,

took the same action against a similar offender.³ In 1720 the Commission considered the possibility of intimating "every sentence of greater excommunication in all the churches of Scotland".⁴ Sixteen years earlier the Assembly had suggested that if "persons do continue to converse unnecessarily and familiarly with such as ly under" excommunication, then the sentence should be inti-

¹Presbytery of Inverary, 5 May 1696. MS.
²Presbytery of Hamilton, 27 December 1697. MS.
³Presbytery of Stranraer, 6 April 1709. MS.
⁴Records of Commission of the General Assembly, 7 August 1720. MS.

rated throughout the presbytery. If the people persisted in speaking with the scandalous person the sentence was to be announced in all the churches within the bounds of the synod. If they still persisted in the habit, then, intimation was to be made from all the pulpits of the kingdom. At these intimations the Assembly appointed ministers "to hold forth the sad state & condition of excommunicat persons and inform the people how to carry towards them".¹

In other circumstances the intimating of private rebukes for the edification of the congregation was a normal practice. The Kelton Kirk-session intimated their rebuke of Elspet Pawlin and her son for lying together.² The Kirk-session of Cumnock, Old Church intimated to the congregation that they had given a rebuke for an irregular marriage.³ Public announcement of private admonitions for breach of the Sabbath were made by Currie Session for the use of the words "whore" and "witches get";⁴ by Carstairs Session for bringing in barley;⁵ and by Inverarity Session for building a coffin.⁶ When the Presbytery of Brechin found an estate factor guilty of conducting business on the Sabbath, they first voted as to

¹ Register of Acts of the General Assembly,

27 March 1704. MS.

² Kelton, 7 January 1715. MS.

³ Cumnock, Old, 11 March 1711. MS.

⁴ Currie, 31 May 1694. MS.

⁵ Carstairs, 16 November 1699. MS.

⁶ Inverarity, 27 November 1706. MS.

whether he should be rebuked before the congregation or presbytery. It was carried that he should be rebuked by the presbytery, but a second vote ruled that the rebuke was to be intimated to the congregation of Navar.¹

There was another instance when an announcement of a judicatory's action was made to the congregation. When guilt for a scandal was neither admitted nor proven, but still thought to be likely, the court of the church could assist the process and have a "true narrative" of the case intimated to the congregation. This narrative would contain all the information as to the state of the process. Following are some examples from the higher judicatories of the church. When a scandal involving Thomas Grant in a case of suspected fornication was found not proven, the General Assembly approved the reading of a narrative to the congregation at the Canongate.² The Synod of Lothian and Tweeddale recorded that

the committee appointed to meet at the Presbytery of Dumbarment the affair of Agnes Burnside reported they had done so according to appointment and that considering the depositions of witnesses they find pregnant presumptions of guilt and give it as their opinion that the synod advise the presbytery in this case to follow the method laid down in the form of Process that is, that they read the whole process before the congregation where the said Agnes does reside and proceed no further in that matter till God in his providence give further light thereon.³

¹Presbytery of Brechin, 19 November 1718. MS.

²Registers of Acts of the General Assembly, 16 May 1727. MS.

³Synod of Lothian and Tweeddale, 5 November 1707. MS.

When the Edinburgh Presbytery was unable to decide in the case of alleged adultery involving James Napier, they instructed that a narrative was to be read.¹

When an offender was sentenced under the discipline to a public appearance, he was commonly required to stand at the repentance stool, or the "pillar" as it was sometimes called.² The place of repentance is not often mentioned in the records and we find a reference to the stool in only four of the Kirk-session manuscripts studied. In 1704 the Kirk-session of Logic authorized the use of "four stools to be a repentance stool", and the expence incurred for "an spear thereto", nails and painting. The stool seems to have been marked in some way, for in the minutes of Logic Church in 1707 is a charge "for lettering of the black stool".³ Inverness Session "finding the town to be peopled with so many loose and debauched persons" ordered a stool to be built "near the highland church".⁴

In some churches, such as Kilmarnock, 1700-4, there seems to have been both a 'pillory' and a 'Forme before the pulpit'; and penitents had either to stand 'haich' on the former, or were allowed to stand 'laigh' at the latter, according to the measure of their transgressions.⁵

The stool was of a good size in some parishes, for at Banff

¹Presbytery of Edinburgh, 22 September 1708. MS.

²At private rebukes the offenders were often required to repent on their knees.

Currie, 12 April 1696. MS.

³Maner, 23 November 1701. MS.

⁴Henderson, The Scottish Pulpit Elder. Page 143.

⁵Mitchell, Inverness Kirk Session Records. Page 61.

⁶Story, The Church of Scotland, Volume V. Page 525.

in 1692, four persons were on the pillar at one time.¹ And Kilmarnock "enacted that persons guilty of fornication should both, the man and woman, appear in the pillory together in time coming". This was in order to clear up a backlog of unpurged scandalous persons.²

Public disciplining was carried out at other places also. Ceres Session appointed Thomas Bell to appear for six months at both the door and on the stool for his relapse in fornication.³ Alexander Herquias of Aberlady stood in both places for his scandalous behaviour.⁴ The same Kirk-session sentenced three men, who broke the Sabbath by drunkenness, to stand at the door from the second bell and then to stand at the end of the elder's table during the service.⁵ A couple guilty of an irregular marriage were sentenced by the Session of Galston to stand "in a place before the pulpit; not a public place, but a place just a little less public".⁶ In 1698 the Presbytery of Ayr rejected a request from a schoolmaster to be permitted to stand at his own seat when undergoing admonition.⁷ A well-to-do young man in a West of Scotland town was granted that privilege, his father declaring that he would give "five bolls of meal for the use of the poor

¹Henderson, The Scottish Huling Elder. Page 116.

²Story, The Church of Scotland, Volume V. Page 328.

³Ceres, 20 September 1696. MS.

⁴Aberlady, 20 May 1705. MS.

⁵Ibid., 19 October 1701. MS.

⁶Edgar, Old Church Life in Scotland. Page 291.

⁷Ibid., page 289.

on condition the session would allow his son to stand in his own seat, and absolve him with one day's appearance".¹ Two men of Leochel-Cushnie were told that they would have to satisfy, for their fighting on the Sabbath, on "the pillar" or if they paid in twenty shillings they could stand at their "own desks".² A laird in Mauchline Parish "refused to go to the pillar, pretending that he had made a promise against it". After several months of contumacy the session handed his case over to the civil magistrate.³

Delinquents commonly had to appear in sackcloth for the more heinous scandals.⁴ Apparently the cost, in some instances, was to be met by the offender. The West Church of Edinburgh ordered a cobbler to "buy one sack gown, to stand at the door of the kirk, and to appear before the congregation".⁵ In most cases the "gown" was the property of the judicatory. "In 1693 Kirkmichael, Ayrshire, ordered one of a special fashion 'like unto that which they have in Stralton,' to be made."⁶ Inverary Kirk-session in 1703 did "cause make a sack-cloth for delinquents" to be used in a very aggravated scandal of immorality on the part of the schoolmaster.⁷ The Stranraer

¹ Story, The Church of Scotland, Volume V. Page 342.

² Leochel-Cushnie, 14 June 1713. MS.

³ Edgar, Old Church Life in Scotland. Page 286.

⁴ However, sackcloth is specifically mentioned in only fifteen instances in the kirk-session and presbytery minutes examined.

⁵ Story, Op.Cit., page 340.

⁶ Andrews, Bygone Church Life in Scotland. Page 112.

⁷ Henderson, The Scottish Ruling Elder. Page 143.

Presbytery ordered the congregation of Ballantrae to provide "saccloth" so an offender could "compare wt the ordinary habit of adultery".¹

There is not much mention of corporal punishment in the registers of the church courts except in general terms of reference as when a delinquent was given to the civil magistrate to "punish corporally". Two means of physical punishment are recorded.

The Lomahgow Kirk Session recommends (in 1697) the Baillie 'to Cause fix a pair of jougs at the kirk door that he may punish corporally those who are not able to pay fynes', the offence under consideration at the moment being Sunday sheep-clipping.²

The "jougs" were also used against cursers by South Leith Kirk-session,³ and by Canisbay against Sabbath breakers.⁴ Kilconquhar Kirk-session had Helen Miller a fornicatrix "put in ye belt" for obstinancy.⁵ Whipping or scourging were also employed. They were very commonly used by the Inverness Kirk-session: 15 April 1690, "bring her after session to the hangman to be banished from the town and parishon with certifiēt'n iff she shall be seen here that she shall be scourged;" 29 July 1690, "ordain them to be delyvered in the hands of the hangman, and to be brought through the streets, and then scourged and banish-ed from this, never to be seen here under pain of being

¹Presbytery of Stranraer, 1 September 1703. MS.

²Henderson, The Scottish Ruling Elder. Page 113.

³Robertson and Swan, South Leith Records. Page 6.

⁴Canisbay, 19 November 1710. MS.

⁵Kilconquhar, 5 May 1706. MS.

were severely used;" 5 April 1692, "ordained her to be carried to prison, and immediately the session dissolved to be brought to the cross and whipt by the hands of the hangman, and banished;" 10 February 1705, "if she payed not the sd fyne imposed against the next session day, the sd baillie ordered her to be whipt and banished;" and in 1719, "did apply to the magistrates that there might be a cockstool erected at the cross for the punishing of those" who had "nothing wherewith to pay their penalty".¹ Edinburgh Presbytery ordered the whipping of Janet Traill for adultery,² Canisbay Kirk-session threatened a scourging in the case of John Grett a Sabbath breaker,³ Carriden Session had a lad publicly scourged for calling a woman a "collies pad",⁴ and a boy from Culross "was dealt with and sharply rebuked for sundry faults, which he could not deny, and was referred to the civil magistrates for causing whip him".⁵

The delinquents were expected to be on their best behaviour during their public appearances. The Kirk-session of Elgin

enacted that the delinquents upon the Lord's day should enter the public place of repentance immediately after the ringing of the third bell and continue there untill the blessing be said and the women to have no plaids about them at the time the minister speaks to them.⁶

¹Mitchell, Inverness Kirk Session Records. Pages 62, 63, 65, & 179.

²Presbytery of Edinburgh, 29 November 1704. MS.

³Canisbay, 13 April 1707. MS.

⁴Carriden, 12 April 1698. MS.

⁵Beveridge, Culross and Tulliallan, Volume II. Page 31.

⁶Cramond, Records of the Kirk Session of Elgin. Page 313.

When William Reid's wife refused to "remove the plaid from her face so as that she might be known", the Presbytery of Dunfermline rebuked her for her contumacy.¹

There were occasions when the instituting of a process did not end in an appearance for sentencing. For example there were those cases in which delinquents were considered incapable of satisfying discipline. In 1700 an Oldham-stocks woman was found to be "stupidly ignorant and scarce able to learn", and her public appearances were stopped until "some pains might be taken to instruct her".² We find the following words in the records of Kilmarnock Kirk-session: "A list of persons unpurged of scandal was read, after which, those of whom the elders reports as being anyway capable of discipline were appointed to be cited against the next session".³ The Presbytery of Aberdeen ordered that Margaret Black, a fornicatrix, was to remain under scandal as long as she was "ignorant".⁴

Another occasion when there was not any sentencing by the lesser judicatories was when an appeal was made. The rules for such a procedure are to be found in chapter five of the Form of Process of 1707.⁵ Anyone who felt

¹Presbytery of Dunfermline, 13 February 1706. MS.

²Henderson, The Scottish Ruling Elder. Page 117.

³Story, The Church of Scotland, Volume V. Page 521.

⁴Presbytery of Aberdeen, 31 December 1707. MS.

⁵Acts of Assembly, 1694.

Previous to the Form of 1707, the Assembly passed the following act.

(Continued on next page)

"losed" by the court could appeal to a higher judicatory

The General Assembly of this National Church, for preventing some Mistakes, that have happened about Appeals; Doth hereby Appoint, that any Appeals made in write under the Appellants Hand with the Reasons thereof, in presence of the Judicatory Appeal'd from, shall be Extracted by the Appellant, in due forme, from the Records of the said Judicatory, and produced to the Judicatory appeal'd to at the discussing thereof, With a Citation of the Parties Defenders therein, either apud acta if they be present when the Appeal is made, or separat Citation if they be absent. And because by the former practice, parties not instantly giving in their subscribed Appeals at the time of the Sentence, were allowed verbally to Appeal, and protest for Liberty to give in their subscribed Appeals with the Reasons thereof, within the space of Ten Dayes thereafter, And because that before the said space the said Judicatory may happen to be up; Therefore it is hereby appointed and Ordained, That all parties, who have Protested as aforesaid, shall within the said space of Ten Dayes, give in their said subscribed Appeals with the Reasons thereof to the Clerk of the Judicatory Appeal'd from, Notwithstanding it may be up before that time: And likewyses that they shall within the same Ten Dayes, intimate their said Appeal with the Reasons of the same, to the Moderator of the said Judicatory, and leave an Authentick Copy thereof with him, Which Appeals and Reasons are hereby allowed to be Registrat by the Clerk, and Summons be directed by him, for Citing the Parties Defenders thereupon. And extracts therof with the Citation foresaid, and appointed to be produced by the Appellants at discussing, to the Judicatory Appeal'd to. And the General Assembly hereby appoints the Clerk, to intimate to the said Judicatory, at their first Meeting thereafter, that such Appeals were given to him in the intervals of their Meetings. And sowlke the General Assembly hereby Appoints, that all Defenders in Appeals, who insist for discussing thereof, shall produce Extracts of the said Appeals and Reasons to the Judicatory Appeal'd to. And lastly, the General Assembly hereby Declares, that any Appeals or insistings thereon otherways made shall be Rejected.

if they made such a declaration at the sentencing. The suspect then had ten days to hand in a written appeal. If the cause were one that required final determination by the presbytery in any case, then they were to proceed immediately. If it were a cause belonging to the jurisdiction of the Kirk-session and there seemed to be no incompetency on their part, the presbytery was to refuse the appeal. If the appellant seemed to have been malicious or litigious, then, he was to be censured. Even if the appeal were heard, a guilty appellant was to receive a rebuke before the parish. On the other hand if the appeal were accepted, the presbytery was then to take steps to vindicate the appellant's innocence and at the same time not weaken the hand of the lower court. It was acknowledged that in some instances it might be necessary to admonish the minister and elders. Execution of a sentence was to be "sisted" until an appeal was decided.

In this fashion some such cases finally came under the jurisdiction of the Assembly and its Commission. During the year 1703, the Commission considered the appeal of Andrew Barlane on twelve different occasions. He was granted permission to have old sickly witnesses questioned away from Edinburgh and to hand in a list of supposed malicious witnesses.¹ A committee heard evidence that one such witness, Janet Barratt, said "she would be

¹ records of Commission of the General Assembly,
10 June 1703. MS.

Mr. Mariane's ensue, but at the same time she declared she had a love for his ensue and had no malice against him". The committee found that this statement could not be substantiated by more than one witness and, as it was "testis singularis", Haggart's original statements were allowed to stand.¹ On 7 September the Commission voted to approve the previous sentence against Mariane.²

Henry Robino, a deposed minister, was so insistent in his appeals that in 1720 the General Assembly did "discharge his further application on that head".³ In 1722 he asked the Assembly "to remove the prohibition or bar ... which seem'd to deprive him of a common right and privilege". The Assembly rejected the appeal and a similar one the following year as having no warrant.⁴ Another deposed minister also applied to the 1722 Assembly. Alexander Leask of Clott complained that when he appealed to the Synod of Aberdeen from the sentence of the Presbytery of Alford, "they found very little proven of what the presbytery had laid to his charge, and yet confirmed the presbytery's sentence". His appeal was denied by the Assembly, but they noted his penitent spirit and thought fit to empower "the foresaid Synod of Aberdeen to repose him to the

¹Records of Commission of the General Assembly,

3 September 1703. MS.

²Ibid., 7 September 1703.

³Registers of Acts of the General Assembly,

16 May 1720. MS.

⁴Ibid., 22 May 1722 & 20 May 1723.

Office and exercise of the holy ministry".¹ Still another minister made an appeal to the Assembly in 1724, concerning a process which was about to commence. John McCormack was concerned by the Presbytery of St. Andrews' decision to meet at Easter Anstruther to hear his case. The Assembly

allow'd the said presbytery to have their first meeting about this matter at Easter Anstruther but appointed them to keep all their after meetings about the same at St. Andrews their ordinary presbytery seat.²

Sometimes the process was interrupted by a lack of co-operation on the part of the delinquent. In an attempt to escape the discipline of the kirk many men fled from the parish. Alexander Adam, a fornicator, fled from the Parish of Auchterderran;³ Elspeth Ingraham, a suspected adulteress, fled from the bounds of Haddington Presbytery;⁴ and Jennet Lindsey, a convicted incestuous person, fled from the discipline of the Presbytery of Paisley.⁵

Such "fugitives" were usually caught when they failed to produce a "testificate" as required. When the ministers of South Leith and Canongate carried out the search for "one Alexr Allen souldier in the foot guards who was fugitive from the discipline of the Parish of Carriden", this was probably the method employed.⁶

¹Registers of Acts of the General Assembly,
17 May 1722. MS.

²Ibid., 20 May 1724.

³Auchterderran, 2 January 1704. MS.

⁴Presbytery of Haddington, 10 October 1706. MS.

⁵Presbytery of Paisley, 27 August 1701. MS.

⁶Synod of Lothian and Tweedale, 11 April 1710. MS.

On other occasions processes were sisted because of the offenders lack of repentance. Marie McCowll of Inverness was said "not to be weighted enough for her sin",¹ and a young married couple of Marchlins were ordered to "lie under the rebuke until their walk appear more suitable after sin".² The Presbytery of Edinburgh asked the synod what was to be done with scandalous persons who were impenitent. The synod

gave it as their advyce, that tho ther appear no signes of repentance, that yet the parties may be brought to a publict reproof before the congregation, and if thereafter no signes of repentance appear, they are not to be absolved from church censure till such pains be taken on them and some fruit yrof appear yron.³

There were those delinquents, of course, who interrupted the smooth working of discipline simply by ignoring the citation of the judicatory. Forty-nine such cases of contumacy appear in the presbytery manuscripts examined. Further evidence that this was a problem for the courts of the church appears in the records of the Synod of Lothian and Tweeddale as early as 1699. In that year they considered what should be done with those who ignored the first two summonses, appeared at the third to avoid contumacy, and then began to "intermitt their appearances" to every third time. The question, referred to the Assembly, was whether three summonses were necessary in such a case.⁴ The Synod of Angus

¹ Mitchell, Inverness Kirk Session Records. Page 54.

² Kager, Old Church Life in Scotland. Page 294.

³ Synod of Lothian and Tweeddale, 9 November 1699. MS.

⁴ Ibid., 21 October 1691. MS.

and Hearn ruled that contumacious persons were to be prayed for in all the churches of each presbytery twice a year on the Sunday before synod; and in the parish where they resided and adjacent parishes on the Sunday prior to Communion.¹ And as late as 1730 Inverness Kirk-session minuted "that a great Number of Delinquents had been Again and Again Often Summon'd, Who Notwithstanding had not hitherto Compeared".² All of the judicatories had to deal with cases of contumacy. Auchtermuchty Session tried to discipline James Mantouls who not only refused to come to the session but hindered his wife from so doing.³ Menmuir passed the lesser excommunication against James Carnegie for contumacy in failing to appear for his fornication.⁴ After hearing a long history of the contumacy of the fornicatrix, Mary Mac, the Paisley Presbytery excommunicated her.⁵ James McCoal submitted to the Presbytery of Penpont after being contumacious to a Kirk-session's sentence for breach of the National Fast.⁶ Fornication was the scandal for which John Coupar refused to be discipline. The Synod of Fife advised the presbytery to "proceed to the sentence of lesser excommunication if he continued in his contumacie; and to apply the civill magistrat for corporal punishment".⁷ And when the Laird of

¹Synod of Angus and Hearn, 19 April 1721. MS.

²Mitchell, Inverness Kirk Session Records. Page 165.

³Auchtermuchty, 8 November 1709. MS.

⁴Menmuir, 19 November 1727. MS.

⁵Presbytery of Paisley, 6 December 1699. MS.

⁶Presbytery of Penpont, 29 December 1703. MS.

⁷Synod of Fife, 25 September 1700. MS.

Clobo was contumacious to the discipline of the church, the case reached the Assembly's Commission.¹

In concluding this general discussion on the process before the judicatories, we note the final stage of a process which was absolution. This procedure is explained in the ninth chapter of the Form of Process, 1707. If signs of repentance appeared in an excommunicated person along with a desire to live a reformed life, he could be absolved if he applied to the presbytery. He was to appear before the congregation and confess his sin and his intention to live a Christian life. He was to appear, as often as was necessary, for edification and the congregation were to praise God for his repentance. The minister was then to pray according to the outline given in the Form, wherein it was stated that the church was satisfied and that the delinquent was re-admitted into the communion and ordinances of the church. Afterwards the minister, elders and members, welcomed the penitent whose absolution was intimated in all the churches where his excommunication had been intimated.

The term "absolved" was also used to indicate anyone who had satisfied discipline, whether they had been under a sentence of excommunication or not. It was also used to indicate whether or not a person was innocent. The following cases illustrate the various ways in which the term was used. James Carnecorse of Northwick was found guilty

¹Records of Commission of the General Assembly,
5 March 1703. MS.

of incest on 22 July 1694 and after appearing before the congregation for a number of Sundays, he was absolved on 1 March 1696.¹ James Howat was absolved from the scandal of adultery six weeks after he had been cited to the Cumnock, Old Kirk-session when it was found that he was being slandered.² John Dein and Marjory Mitchel were absolved from fornication by the Monmuir session on their promise to marry.³ The Synod of Morise and Teviotdale absolved George Shiel of adultery with Isabel Fiddess when she failed to appear against him, there being no other proof.⁴ On the 16th of May 1709 the Presbytery of Stranraer reported to the synod that Alexander Mcougall of Garthland had appeared for sentencing with the lesser excommunication but had not worn sackcloth. The synod appointed a committee "to confer with him and to deal with his conscience in order to bring him to an sense of the evil of his sin". At the synod the following year it was reported that

he seemed to be touched with sorrow for his sin, as the brethren that rebuked him reverted to him, and more over that as an evidence of his repentance and reformation he had set up the worship of God in his family, and that the whole of his conversation is now regular.

A committee conferred with him and ordered the presbytery to release him from the sentence of the lesser excommunication and absolve him.⁵ It is interesting to note that

¹Borthwick, 22 July 1694 & 1 March 1696. MS.

²Cumnock, Old, 13 February 1715 & 1 May 1715. MS.

³Monmuir, 1 May 1698. MS.

⁴Synod of Morise and Teviotdale, 17 April 1728. MS.

⁵Synod of Galloway, 16 May 1709 & 19 April 1710. MS.

Kilmarnock Session ruled "that before any person should be absolved from scandal, intimation thereof should be made to the congregation, that if anything to object", they could inform the session.¹

Due to the diligence of elders, and through the use of summons, witnesses, written libels, etc., the ecclesiastical authorities carried on their processes in an orderly manner in the best legal tradition. Through the use of the testificate, the communion token, and baptism; the kirk easily kept track of its members. The sternness of the oath of purgation and the severity of the penalties for scandal resulted in the majority of the population's acquiescence to the authority and discipline of the church.

In the next chapter we will discuss how the church used the above methods to deal with some of the lesser scandals.

¹Story, The Church of Scotland, Volume V. Page 52.

CHAPTER FIVE

The Lesser Scandals

Chapter three of the Form of Process concerns itself with the discipline to be used against swearers and cursers. It also deals with "Profaners of the Lord's Day, Drunkards, and other Scandals of that nature" which were to be proceeded against in the same manner.

The initial section makes provision for the first offence to be handled completely within the frame-work of the local congregation. If the circumstances of the scandal were evident to all; then the lesser excommunication, suspension from the benefit of the sealing ordinances, and a congregational rebuke could be administered by the kirk-session without any further recourse to a higher judicatory.

This represents a marked improvement on the pre-1707 practice of the church. Due to a lack of elementary rules governing processes, many simple cases traveled the ecclesiastical ladder through presbytery and synod to the General Assembly.

The presbytery in particular was burdened with actions which could easily have been dealt with in the parish courts. For example:

There was a reference fra the Kirksession of Kirkcaldy to the presbyterie anent Janet Hegie in the parish of Kirkcaldie, for saying in presence of the magistrat, if she got not amends of these persons, who, she pretended had wronged her, that she would go to the civil for amends as the said reference at length bears, which being read and the said Janet being cited to compare before the presbytrie this day, was called, compared. The modr held out to her, her guilt, she acknowledged that she had the forsaide expression, she removed. The presbytrie considering this affair do remitt to the said kirk session that she be rebuked publickly in face of the congregation of Kirkcaldy & in the meantime recommend her to the civil magistrat for farther punishment.¹

Lucas Philip being summoned agt this day called, compared, the modr held out to her the heinousness of yt scandal she was lying under via, swearing & scolding wt her neighbours (the same being sufficiently proven) was asked if she was willing to repair to the Kirksession of Abetshall & yr undergo the censure they would inflict upon her? she seemingly penitent declared her willingness as above required.²

The Presbytery of Garioch ordered the sessional rebuke of one Isobell Low for cursing the laird's brother who had evicted her from her house. They noted at the same time that he had done much to provoke her rash words.³ There were however, occasions when the discipline was best acted out by the presbytery as in the case of Agnes Laurie. Since her offence was in "cursing and abusing her minister", it was evidently thought wise ("might not be to edification") not to give Mr. Pollock an opportunity to even the score.⁴

¹Presbytery of Kirkcaldy, 31 August 1701. MS.

²Ibid., 29 October 1696.

³Presbytery of Garioch, 2 March 1704. MS.

⁴Presbytery of Penpont, 11 December 1705. MS.

The civil power also expressed its opposition to cursing.

The Magistrate having fined two persons for cursing twentie shill. Scotts, it was ordered to be given to Mungo Campbell, a poor, blind supplicant.¹

And the Presbytery of Aberdeen appealed for civil help in dealing with Jean Reid who had given vent to her opinion of them.²

The Fora did not completely remove the practice of passing the case to a higher judicatory. In 1722 John W'ellig in Nether Balpedder was rebuked by Penpont Presbytery for having "spoke unsuitably by rash swearing" in a straight forward case that could presumably have been dealt with by the kirk-session.³ But in most instances the local judicatory began to administer the discipline of the lesser scandals after 1707.

For example, in 1708 John Anderson, tailor in Alyth, and his wife were rebuked for cursing and swearing on Wednesday last. And in September 1710 Patrick Anderson and James Henderson, members of session, had been guilty of 'contentious and unsuitable speeches upon the harvest field', and were sharply rebuked.⁴

The Session of Panningshore acted more rigidly in a case of cursing involving one of their number, suspending him

¹Mitchell, Inverness Kirk Session Records, Page 70.

²Presbytery of Aberdeen, 2 September 1697. MS.

... she said, she cared not for what they did; and that she should go ere she would be received, & would draw fyve hundred with her. And, as she was removing, said, my face shall never be seen within your church door; & added, as she went out of door, the blood of my soul will be required at your hand, when you will be in a worse place than now you are in.

³Presbytery of Penpont, 6 June 1722. MS.

⁴Moikle, The History of Alyth Parish Church. Page 134.

from office.¹

If an offender failed to respond to the entreaty of the kirk-session and if the scandal continued, then the case was to be legally brought to the presbytery. This higher body seemed to be somewhat more successful in handling the delinquent. Although there were a few souls brave or fool hardy enough to defy the local kirk-session, it seems the dignity and authority of the higher judicatories awed even those with the most independent spirits. Marjory Young repented before the Presbytery of Forres.² Robert Morrison had thrice disregarded the citation of the Session of Glencarne but immediately appeared before the presbytery and meekly acknowledged his "sin of swearing".³

If an offence continued, steps were taken to ensure that discipline was kept. In spite of the repeated assurances of repentance (from swearing, drunkenness, etc.) that the Presbytery of Inverary had received from "Hot Moss late Provost", they decided to set up a "safeguard". All methods to bring about the desired amendment of his way of life having failed, the sessions of Inverary were given permission to "pronounce sentence of excommunication the next Lords day immediately ensuing" his next fall in sin. This

¹ Paton, Penningshawe Parish Records, Volume I. Pages 346-347.

*** confessed he wished as many curses on them
that eat his grass as they eat of it, as also
that he said the herd boy look'd like a brood
from hell ***

² Presbytery of Forres, 6 April 1720. MS.

³ Presbytery of Penpont, 3 October 1705. MS.

act was "to be intimate in ye churches of Inverary" so that all the citizens would do their part in strengthening Ross's resolve.¹

In some cases such as that of Isobell McKinlay before the Presbytery of Paisley, no repentance or confession was forthcoming. Her guilty behaviour in swearing at her father had been proved by witnesses, and so after prayer for direction "in so important and weightie an affair; They thereafter came to the state of the vote, excommunicat surely, or not?" It carried in the affirmative by a unanimous vote.² James Pollock, a blacksmith in Blantyre, had been placed under the lesser excommunication in 1697 for his cursing. A repeat of the offence in 1708 brought article six of the third chapter into operation. His frequent relapse while under the censure was deemed to be "a degree of contumacy" and to "aggravate the crime", and in accord with the Form of Process the presbytery appointed "the kirk session of Blantyre to raise a process against him for obstinate continuance in these sins; in order to his being laid under the sentence" of the greater excommunication.³

The church's concern over swearing is indicated in one of Hedrow's letters to his wife. He wrote that the committee on Overtures was considering a bill to relieve persons of trust from having to take an oath five or six times in one day. The idea was that they would

¹Presbytery of Inverary, 21 March 1694. MS.
²Presbytery of Paisley, 18 March 1707. MS.
³Presbytery of Hamilton, 31 August 1708. MS.

take it once and thereafter "one instrument ... might suffice".¹

Imprecations were freely used and one continually mired up with scandals involving them. Grissel Dock received a public rebuke at Kelton for saying, "God forget me".² A Carnock woman who said, "the wicked devil be on you", also was rebuked before the congregation.³ Others were rebuked at Auchterderran for claiming that the "curse of God would come on him",⁴ and at Canisbay for saying "God would not let him thrive".⁵ In addition to a public rebuke, the Kirk-session of Fintray fined imprecators forty shillings Scots.⁶ It is interesting to note that in a very large majority of the cases those accused of the scandal of imprecating were women.

Actions against blasphemy were among the most notorious of the period. On the 8th of January 1697, John Turnbull wrote the following in his diary.

Thomas Aikenhead execut at gallow lre, betwixt Leith and Edenr, being convict of horrid blasphemy denying God, the Trinity, the scriptures, etc.; but retracted his errors, and seemed to dye penitent, as a speech left behind him bears. This was in the time of the Assemblys sitting.⁷

The execution was ordered by the Court of Justiciary in accordance with a law passed in the reign of Charles II.

¹ McCrie, The History of Scotland, Volume I. Page 139.
² Kelton, 21 October 1718. MS.
³ Carnock, 22 July 1709. MS.
⁴ Auchterderran, 29 October 1704. MS.
⁵ Canisbay, 9 May 1714. MS.
⁶ Fintray, 18 April 1692. MS.
⁷ Paul, The Diary of John Turnbull. Pages 100-101.

It is significant to note that the Assembly gathered in Edinburgh did nothing to hinder this procedure. The Presbytery of Dumfermline was satisfied with the excommunication of a blasphemer, one Adam Burt, who "uttered these execrable words of God Almighty who is above would say such a thing I would call him a dam'd liar".¹

All other abuses which fell within the confines of the third chapter of the Form (and which are described in the following pages) were judicially administered in accordance with the steps which have been outlined above.

Sabbath breaking was one of the chief scandals to be dealt with according to the procedures of discipline demonstrated in chapter three of the Form. Although one is told how to discipline Sabbath breakers and other offenders, at no time is the term "breach of the Lord's day" or any other term defined. As a result there were a large variety of offences which were considered as "prophaning the Sabbath". Due to this one again finds numerous un-involved actions being passed on from the parish to the presbytery and from there to the synod. The introduction of the Form in 1707 did not in any way impede this flow. In fact there seems to have been an increase in traffic up the ecclesiastical ladder.²

As early as 1690 the Assembly had considered the problem of Sabbath observance and had applied to Parliament for

¹Presbytery of Dumfermline, 13 August 1702. MS.

²The synods considered two cases before the passage of the Form of Process, 1707, and eleven afterwards (1690-1730).

changing any market days that happened to fall on Saturday or Monday.¹ This became a recurrent theme of the General Assembly and its Commission. In 1729 they were still occupied with the problem "with regard to the reference of the Synod of Morae and Teviotdale concerning the changing of the fairs" from Saturday and Monday to other days of the week, "because of the great profanation of the Lord's Day occasion'd thereby".² The only complaint of a particular nature which presented itself to the Assembly was "the great profanation of the Lords day by multitudes of people vaging idly upon the streets of the citie of Edinburgh, peet and shore of Leith", also "in St. Anne yeard and the Queenspark, and in diverse places of the West Kirk parish, and on the links of Leith and other places about Edinburgh, and that by persons of all ranks".³

Slightly over half of the cases of Sabbath breach involved working. All kinds of work were prohibited. Because of the nature of the environment, many of the offences dealt with farming. "sowing his seed and by plowing and harrowing his ground";⁴ "drive a cow";⁵ "killed a sheep";⁶ "yock his horses";⁷ "reaping corn";⁸ "carrying loads of corn";⁹

¹ Register of Assembly, 29 October 1690. MS.

² Records of Commission of the General Assembly, 13 March 1729. MS.

³ Registers of Acts of the General Assembly, 16 April 1705. MS.

⁴ Synod of Morae and Teviotdale, 27 October 1728. MS.

⁵ Presbytery of Penpont, 11 October 1695. MS.

⁶ Presbytery of Middlebie, 27 October 1725. MS.

⁷ Presbytery of Chanonry, 1 August 1721. MS.

⁸ Presbytery of Duns, 4 January 1704. MS.

⁹ Presbytery of Penpont, 17 March 1697. MS.

"wool drying;"¹ "set up a trap;"² "causing a dog to catch a sheep;"³ "covering of his pice stakk with a winnowing cloath;"⁴ and "carrying in milk,"⁵ were among the many scandals committed.

Fishing was also a popular way in which to break the sabbath. Many were cited because they "fished the water;"⁶ "loosing from the harbour;"⁷ and did "oblidge the fishing boats to goe to sea".⁸ In Kilconquhar a penalty of forty shillings Scots was set for each person who so broke the sabbath "by mutuall consent of the session and fishers".⁹

In addition to these two predominant scandals of work there were a large variety of tasks which were found to be offensive. For example at Penninghame there was "the digging of the grave".¹⁰ Aberdeen Kirk-session ruled that none were to bury the dead during worship or at any time on Sabbath except for emergencies. For contravening this act there was a penalty of three pounds Scots, and a public rebuke.¹¹ Strichen Session passed a similar motion.¹² Other descriptions of work that appear as blameworthy in

¹Cramond, The Church and Churchyard of Rathven. Page 59.

²Reid, The Royal Burgh of Forfar. Page 418.

³Progar, Old Church Life in Scotland. Page 252.

⁴Smith, Strathendrick. Page 31.

⁵Lorimer, The Early Days of St. Guthbert's Church Edinburgh. Page 143.

⁶Presbytery of Forres, 2 May 1723. MS.

⁷Presbytery of Stranraer, 8 March 1720. MS.

⁸Presbytery of Caithness, 14 June 1710. MS.

⁹Kilconquhar, 13 June 1714. MS.

¹⁰Paton, Penninghame Parish Records, Volume 1. Page 504.

¹¹Aberdeen, 21 August 1698. MS.

¹²Strichen, 25 December 1709. MS.

the records are: "washed some clothes;"¹ "brewing;"² "water that she was carrying;"³ "boiling vegetables;"⁴ "taking off beards;"⁵ "grinding too soon;"⁶ "packing up cloaths;"⁷ "bake bread;"⁸ "put in the rungs of a car;"⁹ "going to the moss (peat);"¹⁰ "carrying a barrell of ale;"¹¹ and "roeing of salt panns".¹² Those who let blood were to refrain from doing so on the Sabbath except by necessity.¹³

There were also numerous breaches of the Sabbath by those who indulged in drinking. To counteract this type of scandal, tavern keepers who sold liquor were to receive the same censures as the drinkers.¹⁴

The Synod of Angus and Mearns felt obliged to take action against the "vile custom and wicked practice" in the town of Montrose, of prominent persons "meeting in clubs and cavells upon the Lord's day after sermons ... and staying for a considerable time together drinking to excess".¹⁵ Sitting "in the changehouse ... in the time of sermon", was a charge often brought forth.¹⁶

- ¹Barry, 10 June 1720. MS.
- ²Mitchell, Inverness Kirk Session Records, Page 71.
- ³Crasmond, Records of the Kirk Session of Elgin, Page 320.
- ⁴McCall, History of the Parish of Mid-Caldor, Page 235.
- ⁵Turnbull, A South Ayrshire Parish, Pages 90-91.
- ⁶Stephen, The Story of Inverkelthine and Hoorth, Page 82.
- ⁷Presbytery of Dunfermline, 28th October 1714. MS.
- ⁸Presbytery of Perth, 7 May 1707. MS.
- ⁹Presbytery of Perth, 9 January 1706. MS.
- ¹⁰Presbytery of Brechin, 28th November 1704. MS.
- ¹¹Presbytery of Aberdeen, 19 June 1700. MS.
- ¹²Synod of Fife, 26 September 1694. MS.
- ¹³Kirkcubright, 3 February 1712. MS.
- ¹⁴Gladsmuir, 26 February 1703. MS.
- ¹⁵Synod of Angus and Mearns, 18 October 1711. MS.
- ¹⁶Presbytery of Arbroath, 2 April 1718. MS.

In some instances an even greater breach of the Sabbath was to occur when the intoxicated gentlemen left the tavern. One such case happened in Edinburgh: "... some of them drew their swords, and one of them had an sheering hook in his hand, and another of them did break a glass window, and having taken a playd from a woman, throw it into the water".¹ For that exhibition the four men underwent a rebuke from both presbytery and session. A woman had died from a similar excursion just a year previously when a drunkenly driven coach ran her down.²

Under the influence of drink men profaned the Sabbath by "vomiting in time of divine service;"³ "offering to exchange their wives with each other;"⁴ and of course, by "quarreling and fighting".⁵ Newyse Kirk-session set a fine of forty shillings for drinking on the Sabbath.⁶

In order to keep the Sabbath a day of rest in a literal sense, traveling was forbidden. The "unnecessary crossing of ferries" was a problem to kirk-session, presbytery, and synod.⁷ Of equal offence was "traveling of the stage coach".⁸ In addition to these breaches by commercial concerns there were quite naturally the offences of the

¹Presbytery of Edinburgh, 23 January 1706. MS.

²Analista Scotia, Vol. 1, Part 3. Page 239.

³Presbytery of Garioch, 31 December 1701. MS.

⁴Presbytery of Caithness, 3 December 1701. MS.

⁵Mitchell, Leverness Kirk Session Records. Page 144.

⁶Newyse, 14 June 1692. MS.

⁷Synod of Ross, 13 April 1721. MS.

⁸Synod of Sutherland and Caithness, 17 June 1714. MS.

Synod of Lothian and Tweeddale, 2 November 1720. MS.

Synod of Galloway, 19 October 1708. MS.

private individual: "he had travelled from Ballantrae to Minniegaff upon the Sabbath Day;"¹ "walking upon the Lord's day in time of worship;"² "he rode from Kirkwood to Kokiefechan on the sd Sabbath which is three miles;"³ and "going to Kutherglon fair".⁴

Fighting was thought to be particularly scandalous if it occurred on the Lord's Day. Many complaints were brought forward such as the charge against John McKensie of Inverness that "he did beat his wife on the Sabbath day".⁵ "Two youths who had quarrelled were publicly reprimanded, not for quarrelling, but for profaning the Sabbath."⁶ When John Tayleur was beaten for inadvertently walking on a newly planted field, his assailant was rebuked before the presbytery and "he acknowledged judicially, that he was in the wrong, to the poor man, for beating him so on the sabbath day, and declared he was sorry for his sin in breaking the sabbath".⁷

Altogether, working, traveling, drinking, and fighting made up four-fifths of the Sabbath breaches. The remaining cases were concerned with various odd occurrences that had offended the sensibilities. Absolute idleness on the Lord's Day was not condoned. The people were expected to be busy

¹ Presbytery of Stranraer, 4 May 1720. MS.

² Presbytery of Forfar, 18 December 1717. MS.

³ Presbytery of Middlebie, 29 July 1701. MS.

⁴ Edgar, Old Church Life in Scotland. Page 231.

⁵ Mitchell, Inverness Kirk Session Records. Page 184.

⁶ Henderson, The Scottish Ruling Elder. Page 120.

⁷ Presbytery of Brechin, 14 August 1716. MS.

with the things of God.¹ In 1696 the synod of Galloway passed an act against "loytowers" on the Sabbath.² Two sisters appeared before the South Leith Session for "vaging on ye Sabbath day in ye tyse of sermon".³ This type of scandal was frequent.

But worse than idleness was levity. Fintray Kirk-session directed that "no marriage contracts shall be held either on Sabbath day or Saturday".⁴

In Olrig in 1703, the parents of children who had been playing Sunday knottie (shinty) appeared before the Session. They pleaded that the children were not above six years of age, and "that it was altogether against their knowledge that they were so exercised that day". They were dismissed on promising to exercise proper restraint on their offspring.⁵

Glasgow Kirk-session rebuked William Hog for the "making of snowballs & throwing them".⁶ A young lady charged with dancing confessed, "but with extenuating saying it was the night before her marriage day and that she danced but to one spring".⁷ Robert Low was discharged as precentor for his "profanation of the Sabbath by playing on a corn pip".⁸

Many breaches of the Sabbath actually occurred at the time and place of worship. Sessions such as Glasgow⁹ and

¹ Auchtermuchty, 12 June 1709. MS.

² Synod of Galloway, 20 October 1696. MS.

³ Robertson, South Leith Records. Page 1.

⁴ Fintray, 29 March 1713. MS.

⁵ MacInnes, The Evangelical Movement in the Highlands of Scotland. Page 46.

⁶ Glasgow, 16 March 1701. MS.

⁷ Cramond, The Church of the Parish of Alves. Page 63.

⁸ Presbytery of Kirkcaldy, 7 April 1696. MS.

⁹ Glasgow, 25 September 1698. MS.

Ceres¹ had their elders search the parish during the time of worship to ascertain whether or not the parishioners were properly engaged.

The gallery in many churches was an invitation to fun as far as the children were concerned.² The Session of Grange "had to appeal to the Baillie of Regality to pass an Act against dropping stones or throwing down dust from the common loft on the people below. The Baillie appointed that each offender be fined to one shilling Scots."³ More drastic measures were taken by the Session of Cardross who appointed their treasurer "to cause make a lash with a long handle, having several rungs" for use in keeping discipline in the loft.⁴

Another great commotion was caused by fighting over the stools in the sanctuary. For this scandal, offenders were publicly rebuked by most kirk-sessions such as: Moarns,⁵ Fintray,⁶ Auchtermuchty,⁷ and Arbutnott;⁸ while Newtylc,⁹ Newmachar,¹⁰ and Leochel-Cushnie¹¹ were satisfied with a sessional rebuke.

In the church yard, too, there were disturbances.¹² The Sessions of Ettrick and Crathie appointed their members to

¹ Ceres, 17 July 1692. MS.

² Monifieth, 26 December 1703. MS.

³ Cramond, The Parish of Grange. Page 21.

⁴ Murray, The Church of Cardross and its Ministers. Page 198.

⁵ Moarns, 22 October 1695. MS.

⁶ Fintray, 21 March 1725. MS.

⁷ Auchtermuchty, 15 May 1709. MS.

⁸ Arbutnott, 14 December 1692. MS.

⁹ Newtylc, 18 January 1719. MS.

¹⁰ Newmachar, 10 April 1726. MS.

¹¹ Leochel-Cushnie, 30 January 1726. MS.

¹² Canisbay, 6 April 1707. MS.

take notice of all that went on in the kirk-yard during the long worship service. Members of the congregation were asked to "forbear their irregular and unnecessary going out of the church in time of divine worship".¹

Sometimes the disturbance was caused by an unhappy parishioner who made use of the occasion to upbraid his minister. For this scandal John Brock of Inkesteak was given a presbyterial rebuke "in sacco,"² while Lord Neay, the Sheriff, was written to concerning Murdoch Mackenzie who "insolently interrupted ... divine worship".³

Scandalous persons, who treated their discipline as a joke, also offended the sensibilities of the worshipping congregation. The mocking and contempt of Samuel Leivier of Aberdeen, who was being punished for fornication, resulted in the presbytery asking the magistrates to give him an "exemplary punishment".⁴ While in Edinburgh, John Steenson, Alexander Inglis and George Hearvie received the lesser excommunication for their disturbance and offence. They had climbed up and down from the place of public repentance and walked to the door. They had passed a snuff box between them. It was reported of Steenson that "he took up the said James Hearvie hatt, and did hitt a dog that was with him in the seat".⁵

¹ Auchtermuchty, 12 June 1709. MS.

² Presbytery of Caithness, 4 September 1700. MS.

³ Synod of Sutherland and Caithness, 22 June 1730. MS.

⁴ Presbytery of Aberdeen, 24 February 1703. MS.

⁵ Presbytery of Edinburgh, 24 March 1705. MS.

As has been demonstrated, breach of the Sabbath covered a multitude of scandals of varying offensiveness. This being the case it is not surprising that more than fourteen percent of the cases brought before the Kirk-sessions whose records for this period have been examined in detail, dealt with the breaking of the Lord's day. Of course circumstances varied. For instance in Gladsmair parish a total of eighty-seven cases were settled between the years of 1692 and 1704. Of this number thirty-five had to do with breach of the Sabbath. On the other hand, from 1699 to 1710 Kilmaurs handled fifty-nine cases only one of which was concerned with this problem.

It should be noted that breaches of Fast Days followed the same patterns as Sabbath breaking, and were disciplined in the same manner. For the purposes of convenience they have been included in the above study.

A Kilmacolm man used the fourth commandment as an excuse for breaking the Fast day. He denied that to work on that day was a sin "and asserted that no authority could enjoin the keeping of a Fast, in regard it was commanded, Six days shalt thou labour".¹

Scandals of drunkenness were acted on according to the disciplinary measures set forth in the third chapter of the Form of Process and accounted for eight percent of the

¹ Murray, Kilmacolm. Page 109.

cases brought before the kirk-session. Drinking, as we have previously hinted, was quite often only the introduction to a multiple offence. To prevent this sessions, such as Carstairs, declared that all tavern keepers who sold to those who were already drunk would "be equally punished".¹ The hours of drinking were also controlled. In 1693 Parliament declared that any persons convicted of drinking after ten o'clock at night or at anytime of day "except time of travel or refreshment" would be fined three pounds Scots or put in jail for six hours. The penalty for a second fault was five pounds or twelve hours, for the third fault - ten pounds or twenty-four hours. Any further transgression meant a jail sentence.²

Here are some examples of multiple offences incurred by persons while drunk. Thomas Wilson of Penpont was to be rebuked. While drunk, he swore and used "irreverent language" to his minister.³ Alexander Keath, a merchant, combined "swearing and fighting" with his drinking.⁴ A more involved case came before the Session of Cramond

concerning John Harvie, James Nimmo, William Tomple, Jannet Ker and Dorathie M'math guilty of drinking to excess on the Lords day, and scandalous behaviour in John Harvie's lying down in the bed with Dorathie M'math and her mother, and anent the said Jannet Ker, who was guilty, of cursing and lying.⁵

Under the influence of drink tongues were loosened and many things were said that would have remained unspoken

¹Carstairs, - July 1694. MS.

²Gmu, The Book of Stobo Church. Page 74.

³Presbytery of Penpont, 11 November 1696. MS.

⁴Presbytery of Wigtown, 16 April 1701. MS.

⁵Presbytery of Edinburgh, 24 November 1703. MS.

if the speaker had been sober. Quite often the words spoken were to cause greater scandal than the drunkenness. Thomas Lyell had to appear before the congregation in the Tolbooth Kirk for mocking religious exercises and cursing the minister. A companion had confessed that "being in drink he doubts not but their carriage was very unbecoming and that many words were uttered by them".¹ John Taylor was accused of being so rash as to "drink Setons health";² while James Ross had to appear in sackcloth because he did "swear by Christs name & by God to damn him yt he could shape Alexr Drugh better than his maker had shapen him for he is very ill favoured".³ The case of Bessie Glendinning was in a far lighter vein, being an affair of the heart. In her drunkenness she had claimed that the village blacksmith had wronged her. "The presbytery gave it as their opinion she should be rebuked sessionally for her drunkenness and foolish talking."⁴

It was temperance, not abstinence which was the rule of the church. If one did not drink to excess or get involved in a public scandal by committing another offence after drinking, then it was quite permissible and indeed the custom of the day for churchmen as well as for others.

¹Presbytery of Edinburgh, 7 December 1709. MS.

²Presbytery of Aberdeen, 4 April 1705. MS.

³Presbytery of Dunkeld, 31 May 1715. MS.

⁴Presbytery of Edinburgh, 26 May 1708. MS.

Slander was also one of the offences disciplined according to the process set forth in chapter three of the Form of Process. It comes under the heading: "other Scandals of that nature". And it accounted for slightly less than one out of every twenty cases to come before the kirk-session. In parishes, such as Carriden, it actually accounted for over ten percent of the scandals.

The most common form of slander was that of simple name calling. The words, hurled in anger, were usually the result of a neighbourhood quarrel. As such, they were quickly repented. The same is true of those spoken in drunkenness. The records of slander cases abound with the use of such words as: "whore",¹ "witch",² "mangsworn",³ "bitch",⁴ "whore-monger",⁵ and "thief".⁶ In addition there were the more personal and original epithets, such as: "she's a mare and would take a ... horse",⁷ "adulterous dog",⁸ "Casseronian pad",⁹ "extortioner",¹⁰ "Judas heart",¹¹ "too big",¹² and "soul-murderer".¹³

Many slander cases had to do with the false accusation

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- ¹Carriden, 27 May 1691. MS.
 - ²Ibid., 5 November 1695.
 - ³Skirling, 6 May 1705. MS.
 - ⁴Manor, 30 August 1701. MS.
 - ⁵Glasmuir, 15 October 1693. MS.
 - ⁶Kelton, 2 September 1717. MS.
 - ⁷West Calder, 11 September 1709. MS.
 - ⁸Carriden, 15 October 1695. MS.
 - ⁹Ibid., 28 December 1697.
 - ¹⁰Aberlady, 9 July 1699. MS.
 - ¹¹Ibid., 1 December 1706. MS.
 - ¹²Kilmaurs, 7 June 1704. MS.
 - ¹³Presbytery of Penpont, 27 March 1706. MS.

of guilt for a particular scandal. Richard White was rebuked before the Manor Kirk-session for being unable to prove his case against a woman whom he had accused of stealing his wool.¹ Kelton Session dealt with James Hair for accusing a woman of wearing a "stolen napkin ... around her neck".² John Galt received a sessional rebuke for falsely stating that a neighbour "beat his wife".³ The Synod of Dumfries considered the case of a woman accused of "slandering Bessie Ferguson ... wth witchcraft" in 1699.⁴ James Welsh received a presbyterial rebuke, which was to be intimated in his parish, for slandering a neighbour. "He said that Godfrey had played with one sister, and if he married the other it would be incestuous."⁵ James Loigat was laid under the lesser excommunication for spreading a "rythme" which made detrimental references to the Waddell family, and for continuing to act contumaciously towards the presbytery.⁶

Many of the processes dealt with allegations of sexual immorality. It is interesting to note the libel given in to the Session of Horton by Janet Lorimer against William Brown and Agnes Parker. They had accused her of adultery with Thomas Corson, her servant. Before the Presbytery of Perpont, William Brown admitted that his story was hearsay, gossip which he had heard from Agnes Parker. She in turn failed to stick to an accusation of adultery but would only

¹Manor, 15 November 1699. MS.

²Kelton, 4 January 1719. MS.

³Kilmaurs, 2 December 1705. MS.

⁴Synod of Dumfries, 11 October 1699. MS.

⁵Presbytery of Perpont, 19 September 1705. MS.

⁶Presbytery of Hamilton, 28 September 1714. MS.

affirm that "she did see Thomas Corsan above Janet Lorimer in the barn, where they were alone; but she declares that she did not see them commit wickedness".¹ Since adultery was not proven, the allegation was judged a slander and Brown and Parker were rebuked. Janet Lorimer was publicly vindicated. Apparently she was not cited for scandalous carriage because of the absence of the necessary second witness.

Many a fornicatrix found herself to be cited for slander, in addition to fornication. This occurred when the man she had alleged to be guilty with her, absolved himself by using the Oath of Purgation.²

When reading over the processes for slander, one immediately becomes aware that the minister and/or his elders were the subjects of vilification in a significant proportion of the cases. Some of the accusations had to do with the funds of the church. Thomas Forrest of West Calder claimed that a "cow & plaid" had been bought with session funds.³ A Banff man who made a similar charge received a very practical sentence. He was made to help mend "the cheeks of the door of the new church and nail the back wall of the church".⁴ Wemyss heard the case of a man who said "some of the elders had drunken of the poor's money".⁵ James Morton and Andrew Wood were found "guilty of slandering the Reverend Mr. John Thurlburn minister and

¹Presbytery of Penpont, 20 July 1715. MS.

²Presbytery of Caithness, 3 October 1716. MS.

³West Calder, 15 April 1722. MS.

⁴Thurso, 16 April 1716. MS. Page 118.

the Session of Kirknewton with relation to the management of the poor's money".¹ And in 1697 the following process was heard

Which day complaint being given in against William Law, in Udstoun, that he used villifying expressions against the session for their partiality in distributing the poor's money; this he had refused to accept of what the session had sent to the relief of his half-sister (not compos- mentis) because not enough as he alleged. The session desired the minister to admonish him with his first convenience.²

George Walker had to appear two Sundays in the place of repentance in the church of Cumbertrees and had the sentence of lesser excommunication passed against him for having slandered Mr. Hamsey as materialistic. He had wrongly charged his minister with:

his never speaking to any of his people seriously about their souls case, and that his business in visiting was to serve his horse at every home where it was possible for him to eat! And that he went to marry people in brydell houses, whether in the parish or out of the parish, and is sure to get a share of the brydal.³

However, Hamsey also was rebuked for some misdoings.

Ministers and elders did not escape from charges of sexual misconduct. In Paisley, John Nickell swore "by God that Mr. Miller minr of the gospell got all the whoores in the town with child".⁴ And the Synod of Dumfries heard the case of Mr. Taylor who was charged with being "in bed with his sister".⁵

¹Presbytery of Edinburgh, 15 May 1706. MS.

²Nelson, Stonehouse. Page 133.

³Synod of Dumfries, 15 May 1706. MS.

⁴Presbytery of Paisley, 20 January 1714. MS.

⁵Synod of Dumfries, 10 October 1711. MS.

Then as might be expected there were the charges of injustice from those disciplined. The minister of Inverary was accused of hiring a witness to prove an adultery case.¹ Of the Session of Kennoway it was said by their bench that they "medled wt affairs yt did not belong to ym especially in ym matter of a ryot betwixt him & Elizabeth Norrie".² The wife of a deposed schoolmaster of Inchinnan made the following observation.

It was a wonder, if the judgment of God did not pursue the session ... for what they had done to her ad husband ... that her husbands blood would be upon them ... that the session ... was a scandall to the gospoll.³

Of course, there was simple name calling. Ministers and elders were labeled as: "Judge lepariet", "perjured",⁴ "liar",⁵ "scandalous person",⁶ "slave, hypocrite",⁷ "the minister did swear by the Eternal Jehovah",⁸ and "murder of his father".⁹

Those who reported cases of slander were obliged to do so in writing. A deposit was also required which was returned if the slander were proven. In Borthwick a pledge of half a crown was required.¹⁰ Inverarity settled for a shilling.¹¹

- ¹ Presbytery of Inverary, 25 July 1693. MS.
- ² Presbytery of Kirkcaldy, 22 June 1699. MS.
- ³ Presbytery of Paisley, 15 August 1705. MS.
- ⁴ Mager, Old Church Life in Scotland, Page 237.
- ⁵ Nisbith, Stonehouse, Page 132.
- ⁶ Presbytery of Cupar, 27 December 1720. MS.
- ⁷ Presbytery of Edinburgh, 2 August 1705. MS.
- ⁸ Carriden, 3 September 1693. MS.
- ⁹ Kilmaurs, 13 October 1699. MS.
- ¹⁰ Borthwick, 27 April 1692. MS.
- ¹¹ Borthwick, 3 June 1729. MS.
- ¹² Inverarity, 11 October 1719. MS.

When it came to fighting and the use of physical violence, the minister and/or his elders were once again a prime target for abuse. Discipline in these cases was to be meted out according to the third chapter of the Form.

The Synod of Angus and Meams ordered a Mr. Losly to be rebuked before the congregation of Maryhill for having slapped Mr. Kerr, his minister.¹ In 1713 the Synod of Galloway had before it the more violent case of Andrew McCready and Archibald Marshall. McCready was the Provost of Stranraer and Marshall the minister at Kirkcumb. At the cross of Stranraer, the minister had been knocked down by McCready who then proceeded to beat him with his own staff until he was badly bleeding. For this assault the Provost was suspended as an elder and the case referred to the civil authorities for the appropriate punishment.² Ten months later he was rebuked before the congregation at Stranraer.³

Much of the fighting was of a domestic nature. Wife beating was rather common, such as in the case of William Brew who was obliged to do penance in sackcloth for abusing his spouse.⁴ John Fairney,⁵ John Campbell,⁶ John

¹ Synod of Angus and Meams, 20 October 1705. MS.

² Synod of Galloway, 20 October 1713. MS.

³ Presbytery of Stranraer, 11 August 1714. MS.

⁴ Presbytery of Wigtown, 10 August 1708. MS.

⁵ Carriden, 16 September 1694. MS.

⁶ Ibid., 18 January 1698.

Thomsone,¹ and James Kie,² all of Carriden were rebuked for striking their wives. At Kingarth Robert Smith's fight with his wife was occasioned by his pinching his daughter's ear for telling a lie. His wife coming upon them took him by his collar and hair. They were both rebuked.³

Discipline of children was not allowed to be indiscriminate, and a woman of Aberdour found herself being publicly rebuked for "cursing and abusing her children".⁴ However sons and daughters were seldom successful in asserting their own rights against their parents, or even of defending themselves as this case in Penninghame Parish well illustrates.

Compeared Marjory McMurter and absolutely denies that she did anything to her father but hold his hands and the stick when he was furiously beating her. Compeared Margaret Herron and declares that all she knows in this is that she hearing Janet McTeas cry bitterly whereupon she coming to the house she heard John McMurter say his daughter gripped to his crook. She saw him also take up a staff and lifting it to strike his daughter gripped it and hold it. She declares she saw no more. Janet McTeas wife to John McMurter, compearing denies that her daughter did put hand to her father at all. John McMurter being sick declared to the minister that his daughter Marjory put no hand to him at all but held his hand only when he in passion was going to beat her. The session considering that only Margaret Herron is a competent witness and Janet McTeas, mother to the said Marjory being the other, in regard the fact is capital if proven and it not being judged safe to take her mother's oath least affection should make her wrest conscience they pose

¹ Carriden, 15 June 1700. MS.

² Ibid., 4 July 1699. MS.

³ Paton, Penninghame Parish Records, Volume I. Pages 53-54.

⁴ Aberdour, 13 January 1700. MS.

this matter with a seasonal rebuke and information of the dreadfulness of this sin to her if she at this or any time be guilty of it.¹

John Napier,² and George Tillich³ of Carriden, and Helen Smith of Gladenair earned a public rebuke for their disrespectful attacks on their parents.⁴ And in at least two cases of violence within family circles, the mother-in-law was the unhappy recipient of the blows.⁵

And then there were the usual neighbourhood brawls, quarrels, and fights. The spectacle of women fighting among themselves was common to the parishes,⁶ as was that of a man striking a girl.⁷ Isobel Forsyth of Horton was so angry with William Smith that she threw a lamb at him.⁸ A case in Inverness gives us a good example of the crude manners of the day.

Catherin Ross, servant to Hugh Robertson, Compeared before the Session, and told that upon the third day of August last she had been basely maltreated upon the High ways betwixt the Town and the King's Mills by William MacRobert, youngest of Girdlechin, in Company with Esqair Collums & Cadie Jackson in Colonel Kirk's regiment, who had tossed and tumbled her in a most

¹ Paton, Penningsham Parish Records, Volume I. Pages 53-54.

² Carriden, 17 June 1694. MS.

³ Ibid., 23 January 1700. MS.

⁴ Gladenair, 25 June 1693. MS.

⁵ Stracathro, 28 October 1727. MS.

⁶ Story, The Church of Scotland, Volume V. Page 472.

⁷ Aberdeen, 11 August 1700. MS.

Carriden, 27 July 1692. MS.

Kilconquhar, 1 March 1702. MS.

Newmachar, 7 October 1695. MS.

⁸ Strichen, 6 May 1716. MS.

Northwick, 16 November 1701. MS.

Cristairn, 14 June 1702. MS.

⁹ Strichen, 25 July 1725. MS.

Presbytery of Forpont, 6 January 1725. MS.

Indecent and Barbarous Manner, and Declared that the said William Macpherson was the Chief Instrument and Instigator of the others in the rude Assault made upon her, having himself wrestled with her, and then taken the plaid and Bonnet from Ensign Collum, whom the said William provoked to drag her into the Corn, where they shuffled her Cloaths, and the said William Beat her naked Body with a Drawn Sword, All which being considered, The Session did Appoint the said William to be summoned to the next Session.¹

Men, who settled their differences of opinion with each other by the use of fists, were disciplined according to the Form of Process. Two men in Fintray fought because of "one man's beast being on ye other man's grass".² Chris Thom was barred from coming to the Lord's Table for fighting with his neighbour and refusing to be reconciled.³ And for his fighting, John Laird of Canisbay was "threatn'd with joges or public whipping" if he did not reform.⁴

It is interesting to note that over three-fourths of the scandals of fighting which have been studied were further complicated by being also a breach of the Sabbath. One is forced to conclude that minor acts of physical enmity, that occurred on week days, were overlooked.

One out of every fifty cases to come before the kirk-session involved a miscellaneous selection of offences from "promiscuous dancing" to theft. This odd assortment was to be dealt with through the use of the third chapter

¹ Mitchell, Inverness Kirk Session Records. Page 182.
² Fintray, 20 July 1718. MS.
³ Newtyle, 9 April 1704. MS.
⁴ Canisbay, 19 November 1710. MS.

of the Form which served as a "catch-all" for minor offences.

Henry Grey Graham says of the eighteenth century: "All gaiety was looked on with grim censure. Kirk-sessions uttered anathemas against all worldly pleasures".¹ Without painting such a black picture, it is true to say that discipline was voted out for offences that would perhaps be looked upon as mere jests today. When William Barnumman offered "in droll" to sell his wife, and Peter Morison took him seriously; the end result was a public rebuke before the congregation and the reference of the case to the magistrates.² It was wise to watch one's tongue and the Presbytery of Dunfermline cautioned one of its members "to guard against using scripture expressions in his jests".³ Even the use of nick-names was an offence.⁴

Unseemly acts often offended the sessions and presbyteries. Jean Ogilvie of Dysart "who ran in the women race at Kirk-caldy",⁵ and five Inverness men who "went in disguise" received a congregational rebuke;⁶ while John Fleming and Robert Wilson were admonished before the session for playing cards, "and ... Wilson engaged himself to burn the cards when he went home".⁷ Performing a mock wedding caused John Aitkin to come before the presbytery.⁸ and

¹ Graham, The Social Life of Scotland in the Eighteenth Century. Page 92.

² Cramond, Records of the Kirk Session of Elgin. Page 315.

³ Presbytery of Dunfermline, 26 October 1709. MS.

⁴ Kelton, 12 June 1715. MS.

⁵ Presbytery of Kirkcaldy, 26 July 1703. MS.

⁶ Mitchell, Inverness Kirk Session Records. Page 50.

⁷ Walsmith, Stonehouse. Page 133.

⁸ Presbytery of Biggar, 16 January 1710. MS.

for his "ill tricks" a Wemyss man was referred to the civil magistrate.¹

In 1701 the General Assembly revived the Act of the Assembly of 1645 against "lykewakes, also the said Assembly's Act against 'Penny-Brydalls', and the Act of 1649 discharging 'promiscuous dancing'".² The Presbytery of Borneoch put its finger on "musick-playing" as the heart of the objectionable practices at lykewakes,³ and some sessions found it necessary to apply to the civil judge to help them "to root out so prevailing a custome". The result of their application was as follows:

This day the minister read from the pulpit an Act of the Court enacting and ordaining that all fiddlers playing at any Leickwakes in time coming shall pay to James Gordon, Procurator-Fiscal of Court, five pounds Scots for each contravention, and each person who call or entertains them in their families shall pay to the said James Gordon twenty pounds Scots for each contravention, and the said James Gordon is hereby empowered to seize any fiddler so playing at Leickwakes, and to secure ym untill they pay their fines and find caution they shall not play at Leickwakes in time coming.⁴

The piper, not the fiddler, was the main music maker at the penny-weddings. They were said to "occasion that lascivious and unchristian carriage which is common only at marriage feasts".⁵ Their playing was forbidden and all who contravened the act had to "forfeit their pouns".⁶ The

¹Wemyss, 9 April 1697. MS.

²Acts of Assembly, 1701.

³MacInnes, The Evangelical Movement in the Highlands of Scotland. Page 50.

⁴Macpherson, Glimpses of Church and Social Life in the Highlands in Olden Times. Page 142.

⁵Oyne, 23 March 1701. MS.

⁶Crasmond, The Churchy

wedding pledge was usually one dollar,¹ but sessions such as that at Inverkeithing forbade penny-weddings "under the paine of eight pounds Scots payable to the poor box by parties married".² Stanton Kirk-session required the engaged couple to "consigne two dollers". This was kept for the nine months from the time of the proclamation of the banns; and if they did not marry, or if they held a penny-wedding, or if premarital fornication were proven, then the money was forfeited.³ One presbytery tried to control the "gross abominations" of the penny-weddings by limiting the number in attendance. They ordained that

in addition to the married people, their parents, children, brothers, and sisters, and the family wherein they live, there shall not be present above four friends on either side, with their ordinary domestic servants.⁴

All such attempts to prevent penny-weddings seem to have failed. At the January 1721 meeting of the Presbytery of Dunelm nine such offences were recorded. The presbytery was disciplining approximately fifty cases per year.⁵

Not overlooking the excessive drinking and the fighting that occurred at weddings; dancing was the chief scandal. When a man died while dancing at his wedding, Henry Paton, the groom, was told that the death was a mark of "the signal displeasure of God against the form of his marriage".⁶

¹Wemyss, 1 July 1695. MS.

²Stephen, The Story of Inverkeithing & Rosyth. Page 84.

³Stanton, 28 August 1698. MS.

⁴Stephen, Op.Cit., page 85.

⁵Presbytery of Buns, 3 January 1721. MS.

⁶Presbytery of Kirkcaldy, 26 July 1702. MS.

The Kirk-session of Wemyss had six cases of "promiscuous dancing" before them in a like number of years.¹

Theft was also a concern of the judicatories. Whether a man was guilty of house breaking² or sheep stealing,³ whether he had taken the "ministers wigg"⁴ or "bonnetts from a merchant",⁵ whether he had run off with two sheaves of wheat,⁶ "one handful of meal",⁷ or a cheese,⁸ he was the concern of the kirk-session. As also were they who passed on stolen goods,⁹ and he who was guilty of "purloyning & embezzling of his masters goods".¹⁰ The Kirk-session of Ceres not only admonished children for "stealing pise", but also their father for not having corrected them.¹¹

Thieves were a disgrace to the parish and were often stigmatized or burnt upon the cheek as a brand of their infamy, and then banished.¹² James Gillespie who had "stolen part of the money gathered ... for the use of the poor" was expelled from the College of Glasgow.¹³

One last scandal that was infrequently disciplined

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- ¹Wemyss, 22 January 1693 - 24 December 1699. MS.
 - ²Corridon, 12 March 1700. MS.
 - ³Manor, 24 May 1702. MS.
 - ⁴Kilmours, 22 January 1699. MS.
 - ⁵Ibid., 30 December 1702.
 - ⁶Ibid., 10 October 1702.
 - ⁷Eastwood, 27 July 1718. MS.
 - ⁸Carstairs, 15 June 1723. MS.
 - ⁹Kilmours, 30 August 1706. MS.
 - ¹⁰Carstairs, 2 April 1721. MS.
 - ¹¹Ceres, 15 November 1703. MS.
 - ¹²Craone, The Church and Churchyard of Gullon. Page 137.
 - ¹³Munimenta Almae Universitatis Glasguensis, Volume II. Page 309.

according to the method described in chapter three of the Form of Process, was provarication. A habitual case of lying usually resulted in a rebuke before the session.¹

Cursing, Sabbath breaking, fighting, drunkenness, slander, and a variety of other scandals were all disciplined in the same manner. The range of cases on which the judicatories acted was remarkable. There seems to have been no room for the frivolous person in such a rigidly disciplined society. In the next chapter we will see how the kirk dealt with the sexual offences.

¹ Kilsnairs, 17 November 1710. MS.

CHAPTER SIX

The Sexual Scandals

Chapter four of the Form of Process is entitled, "Concerning the Sin of Fornication, Adultery, and Scandalous Carriage tending thereto". The first three sections deal with scandalous actions, "lascivious and obscene", which tend toward uncleanness or which are in themselves thought to be offensive. The Kirk-session is instructed to move with caution if presumptions cannot be proven and to limit the rebuke of minor offences to private admonition.

"Scandalous carriage" was the term under which four per-cent of the cases in the manuscript records studied were minuted by the Kirk-sessions. For example, Alexander Bishop of Currie and a vagrant woman were rebuked and discharged from living together. Both were single persons and were warned by the Kirk-session of Currie that they were court-ing temptation.¹ In Glasserton William McTuff received a congregational rebuke for having conveyed a known adulteress to the port.² Vispet Paulin and her son received a sessional rebuke for lying together, but it was to be publicly intimated to the congregation of Kelton.³ For "show-ing her nakedness", Agnes Wilson was not only the recip-

¹Currie, 2 December 1697. MS.

²Glasserton, 18 October 1713. MS.

³Kelton, 7 January 1715. MS.

lent of a sessional rebuke, but was advised to remove herself from the parish of Auchterderran. She was warned that if she committed another offence the session would apply to the magistrate to enforce her banishment.¹ A sessional rebuke was received by Alexander Bires and Mary Hill of Arbutnott for "wrestling together upon a bed",² for "scandalous carriage" a couple were rebuked on the stool at Carriden³ and a man made to repent on his knees at Manor.⁴ At Ordiquhill the fine for this offence was but a half-crown,⁵ while at Monmuir it was four pounds.⁶

"Scandalous carriage" was of more concern to the presbyteries and accounted for one hundred eleven out of the 1,517 cases of sexual immorality in the manuscripts studied. The Presbytery of Edinburgh considered sixteen such cases in a ten year period.⁷

Paisley Presbytery found it necessary to sentence Alexander Eggle with the lesser excommunication. Eggle was a married man but was writing to another as his wife.⁸

Four women within the bounds of the Presbytery of Cupar were found guilty of scandalous carriage having danced in a barn until past midnight with some "Highland men".⁹ And when a group of men and women were found to be sleeping

¹ Auchterderran, 13 November 1696. MS.

² Arbutnott, 29 July 1705. MS.

³ Carriden, 19 March 1695. MS.

⁴ Manor, 16 April 1714. MS.

⁵ Ordiquhill, 28 February 1705. MS.

⁶ Monmuir, 24 September 1695. MS.

⁷ Presbytery of Edinburgh, 1 December 1701 - 13 December 1710. MS.

⁸ Presbytery of Paisley, 2 June 1703. MS.

⁹ Presbytery of Cupar, 22 May 1716. MS.

together in a barn they were rebuked by Garioch Presbytery.¹ The Presbytery of Dunkeld ordered a congregational rebuke for Thomas Alison a married man who was found drunk and "solo nudo" with Isobel Watson.² Although the common penalty was a straight forward rebuke before the presbytery, at least one couple had to appear in a sackcloth before Caithness Presbytery for their scandalous carriage.³

Some cases went as far as the synod. Here again, we find examples of incidents where the circumstantial evidence of sexual misconduct was sufficient but where the facts could not be proved. Before the Synod of Galloway, Andrew Blain and Catherine Blain were reported to have been seen by a young woman upon the Communion Sabbath at Ballintnac in "a very unseemly posture". The young lady's mother only saw "Andrew Blain come out of the place and the sd Catherine Blain who was still in the place sitting upon the ground and that she saw the hole which they had made with their feet".⁴ And in a like manner Grissel Watson

confessed that David Gailvy of Peel younger had taken her from Dundie under promise of marriage and that she lay in bed with him in a house about six miles from Dundie in their way to the said gentleman's house, but that she knew not the name of the place and peremptorily denied that she had any carnal dealing with him, he having promised not to marry her but to wait until her friends consent say he had and that they never afterwards lay together.⁵

¹Presbytery of Garioch, 3 March 1702. MS.

²Presbytery of Dunkeld, 13 February 1717. MS.

³Presbytery of Caithness, 2 April 1712. MS.

⁴synod of Galloway, 22 October 1712. MS.

⁵synod of Angus and Morins, 17 October 1705. MS.

soldiers were often convicted of scandalous carriage and other sexual offences. On several occasions the Inverness Kirk-session "ordained yt a pairt of yr number should goe and speake to Colonell Lesslie anent the several abuses comited by his souldiers".¹ Because of the nature of the military, these men often avoided censure and the church frequently attempted to remedy this situation. In 1711 the Commission recommended that discipline against soldiers

should be carried out immediately, and if they are moved it should be carried out in the parish where they are quartered and that the outcome should be reported to the parish where the scandal was committed that it may be intimated.²

Both the Assembly in 1716,³ and its Commission in 1724,⁴ applied "to the Commander in Chief of his Majestic's forces in Scotland" to oblige soldiers "to answer to church judicatures" and to suppress abuses and restrain immoralities among them.

Beyond "scandalous carriage" was the offence of fornication. Section five of the fourth chapter of the Form deals with unmarried women known to be with child. Instructions are given to the Kirk-sessions to begin

¹Mitchell, Inverness Kirk Session Records. Pages 35, 65-68.

²Records of Commission of the General Assembly,

25 May 1711. MS.

³Registers of Acts of the General Assembly,

27 May 1716. MS.

⁴Records of Commission of the General Assembly,

29 May 1724. MS.

processes against them, and to interrogate them as to who is the father of the child. At Inverness for example:

Christian Ross, being called, Compeared, and adhered to her former Confession, and that Mr. John Polson, younger of Kilmyle, was Father of the last child she brought forth, and it was reported that the said Mr. John Polson owned the same.¹

To the Synod of Morso and Teviotdale, Margaret Gentie declared that Dr. John Drummond, a papist, was father of her child.²

As could be expected, the alleged fathers did not always cooperate. Jenn Ormiston on her bed of childbirth and afterwards before the Synod of Morso and Teviotdale accused Lord Broadmeadows of being the father of her child, which he repeatedly denied.³ And at Crathie

Anne Lawrance, being called compeared and affirmed what she formerly said regarding the father of her child. Nathaniel Ross having compeared denied all carnal dealing with her, but she brought in again avowed in his face that she had been with him about the time of the buying of the ewes.⁴

Often the alleged father was out of the district and the case was suspended for the time being. That is what happened in the case of Isobell Ross daughter of the Inverness Kirk Officer. The accused was "a seaman in the King's fleet".⁵ Nineteen years previously an Isobell Ross of the same parish had named a man in London as the father of her child.⁶

¹ Mitchell, Inverness Kirk Session Records. Page 180.

² Synod of Morso and Teviotdale, 22 April 1719. MS.

³ Ibid., 23 October 1729.

⁴ Stirton, Crathie and Brainerd. Page 212.

⁵ Mitchell, Op. Cit., page 60.

⁶ Ibid., page 36.

There were times where the mother wouldn't cooperate. Jane McCandlish of the Parish of Whitehorn was one of many "who refused to declare go is the father of her child". For her contumacy she was referred to the magistrate.¹

Where there was no child to give self-evident proof to a confession or allegation of uncleanness, the session was to carefully weigh the motives of the informer as well as the facts of the case. For example, there were at least two cases of rejected suitors and one breach of promise which reached the presbyteries. Two of the processes were considered in December 1708. Janet Robertson appeared at Perth to assert "that Charles Anderson did promise to marry her and that he was guilty of fornication with her". As there was no proof of her charge and Anderson denied it, the recommendation was that "she should be rebuked before the congregation of Perth as a slanderer".² John Fergus of Chappel was so determined to prevent the marriage of Mary Blake that he not only alleged uncleanness with her to the minister, but went into the parish of the bridegroom spreading the same story.³ And in 1716 a similar

¹ Synod of Galloway, 21 October 1696. MS.

² Presbytery of Perth, 1 December 1708. MS.

³ Presbytery of Carluke, 30 December 1708. MS.

A reference also from ye Session of Chappel
anent John Fergus was given in bearing yt ye
week immediatly befor ye marriage of Mary Blake
in Invernessay & after all her proclamations were
passed ye sd John had come to ye minister & al-
lotted yt he was guilty of uncleanness wt ye
sd Mary condescending upon time, place, & oyr

case was to be considered in Ioverary when John Campbell accused Ann Campbell of fornication with him because she refused to become his wife.¹

Generally speaking, offenders were to satisfy discipline

presumptions of yr guilt as also yt he had promises of her to marry him & yt yrfor her marriage wth her bridegroom sho^{ld} not be proceed- ed in telling also yt he had gone of purpose to yr Parish of Kain where ye bride room lived & told him & his friends ye same things. Whereupon ye minister having called a session pro re nata, cited ye woman and sent for ye bridegroom. They were all confronted together. The sd John allead- ged as above & ye sd Mary denyed ye whole & of- fered to exculpate herself as to all he alleadged wth respect to ye guilt of uncleanness & ye bride- groom declared tho he did not believe what John says alleadged, yet he could wish ye things were put to tryall. Whereupon warrants were allowed to both parties for citing witnesses to prove yr seall allegations. Therafter all parties being sist ye sd John adduced no witness for proving what he had alleadged & had nothing to offer but his own strong assertion. Seall witnesses were adduced by ye sd Mary who by yr depositions did fully ex- culcate her of all yt ye sd John had alleadged & proved her alibies to all yt times & places he contended on upon q^h ye session had allowed her marriage & found him a notorious prevaricator & defamer of himself and ye woman but in respect of ye singularity of ye case they had referred ye determinatin of his censure to ye pby and had cited him to this dy-t. The pby approved ye sessions conduct in this matter & ye sd John being called, compeared but notwithstanding ye witnesses depos- itas ye sessions sentence & his own former pre- varications, he still alleadged yt he was guilty wth ye sd Mary Blake. The pby considering the whole and having read ye act of ye Assembly 1707 relative to this case did, according to ye sd act, appoynt him to compear ye congregatin and be rebuked as a defamer of himself & ye woman & to be laid under yr lesser sentence till he be found sensible & appoynts the Justices of Peace to be applied to for punishing him according to law.

¹ Presbytery of Ioverary, 18 April 1716. MS.

in the parish in which they resided unless the scandal was committed elsewhere and was more flagrant there. For example, John Taylor and Helen Angloish committed fornication in Salt Preston. When it was found

that there is no flagrant scandal in the Parish of Salt Preston, and Mr. Horsburgh declaring that the Kirk-session of Salt Preston had never heard of any such thing till related to them by Laddy Yeaster's Kirk-session;¹

the synod advised that satisfaction be given in Laddy Yeaster's Parish Kirk where they resided. If the delinquents lived in different parishes and the scandal was known in both places, then they were often required to satisfy in both churches, as in the case of John Galbraith and Margaret Graham which was heard by the Presbytery of Edinburgh.² When George Broom of Glasgow was found guilty of adultery with Nicolas Strand of Edinburgh, the Commission advised that the process, admonition, prayers, and sentencing should be done in Edinburgh; and all intimated in Glasgow.³

As recorded in the manuscript minutes of the judicatories, there were at least six different classifications of fornication. In the first place there was "antenuptial fornication" - what is today called premarital sex relations. This offence was a common one. Two hundred twenty-eight cases of this nature were decided in the kirk-sessions whose manuscripts were studied. This represents approxi-

¹Synod of Lothian and Tweeddale, 8 May 1707. MS. case against
²Presbytery of Edinburgh, 24 April 1706. MS.

³Records of Commission of the General Assembly,

¹Synod of Lothian and Tweeddale, 8 May 1707. MS.

²Presbytery of Edinburgh, 24 April 1706. MS.

³Records of Commission of the General Assembly,

11 March 1701. MS.

William MacRobert of Girsachin is typical. He

Compeared, and Confessed a fall in fornication with his lady before Marriage; he was seriously Exhortet to Repentance, and Ordered to Compeer before the Congregation, and be Rebuked and Absolved.

Thirty years earliet the same kirk-session ordered that Alexander Munro, who had falsely declared "yt he was free of his said wife before the deat of marriage", should

stand three severall Lord's days at the Church Door yt open to the West, being the most conspicuous place, and yr to stand whyll the people goe to Church with a paper on his breast wrytten Capital Letters Declair his guilt, and till this be performed he is ordained to prison whyll he find beal.²

Only forty-two such cases reached the twenty-five presbyteries whose manuscripts were examined; others went to the synod. At least one such case, that of George White, reached the Commission of the General Assembly.³

It seems to have been the custom of some kirk-sessions to require only one appearance of antenuptial fornicators. John Brand records the fact that Bo'ness Session had gone from the practice of one appearance to three. He was of the opinion that they should go back to one. His thoughts were occasioned by the case of a man who wanted his twins baptized, but who would not seek a sponsor. The children were thought likely to die before the man and his wife could appear three times. Brand goes on to note that

¹Mitchell, Inverness Kirk Session Records, Page 185.

²Ibid., Page 65.

³Records of Commission of the General Assembly, 11 March 1719. MS.

some of the Edinburgh churches required only one appearance, and that in the baptismal room.¹ On the 6th of July 1707 Borthwick Kirk-session stated that only one appearance need be made by James Blake and Margaret Melrose as the scandal was not detected before their marriage.² Fintray,³ Cleish,⁴ and Barry⁵ followed the same practice. Later Barry declared that they should appear three times,⁶ and in 1727 when the St. Vigean's Kirk-session ordained a single appearance and half a fine as discipline, they were overruled by the presbytery.⁷ Wemyss required three appearances by offenders,⁸ and when a relapse in antenuptial fornication occurred in Corstair's, six appearances were required.⁹ John Stuart protested in vain to the Presbytery of Aberdeen about having to appear more than once.¹⁰ To stand in sackcloth in all the churches in the province of Caithness was Adam Sutherland's penalty for committing antenuptial fornication while under the sentence of the greater excommunication.¹¹ The financial penalty seems to have been approximately four pounds,¹² but could vary from parish to parish, and even within the same parish. At

¹ Brand, "Memoirs", pages 274 - 275. MS.
² Borthwick, 6 July 1707. MS.
³ Fintray, 19 August 1716. MS.
⁴ Cleish, 27 October 1723. MS.
⁵ Barry, 25 February 1705. MS.
⁶ Ibid., 15 January 1724.
⁷ St. Vigean's, 30 July 1727. MS.
⁸ Wemyss, 13 October 1700. MS.
⁹ Corstair's, 22 April 1722. MS.
¹⁰ Presbytery of Aberdeen, 31 December 1707. MS.
¹¹ Presbytery of Caithness, 30 July 1701. MS.
¹² Corstair's, 22 April 1722. MS.
 Auchterderfan, 3 September 1704. MS.
 Barry, 25 February 1705. MS.

Aburdour the fine was once seven pounds and eight shillings,¹ at Fintray a one-pound fine was levied in 1716, and a ten pound fine for the same offence in 1723.² In 1704 the Presbytery of Hamilton overruled the synod that "the severity of discipline ought to be remitted" if "the knowledge of the fact and the conviction thereof be not till after marriage".³

Of all the scandals that are recorded in the judicatory manuscripts to which special attention was given, single fornication is by far the most numerous. Five hundred one cases were settled by the fifty kirk-sessions. In other words more than one out of every three cases. Out of the 1,371 cases of sexual immorality settled by the twenty-five presbyteries whose records were examined, three hundred sixty-one were cases of single fornication. In Foveran, where ninety-nine cases of discipline were to come before the kirk-session between 1690 and 1712, fifty-seven instances of single fornication were settled. The Barony of Glasgow Kirk-session decided on fifty-four cases of fornication out of one hundred processes settled by it in a twenty-eight year period. Of all the session records examined, the one to have the lowest percentage of fornication processes was Skirling. This kirk-session gave judgment on only two cases of simple fornication out of twenty cases of discipline heard and acted on from 1701 to 1730.

¹Aburdour, 18 January 1700. MS.

²Fintray, 19 August 1716 & 27 October 1723. MS.

³Presbytery of Hamilton, 25 December 1704. MS.

that Boston recorded on 22 August 1728 was the experience of many parish ministers.

Since the latter end of June three fornications have broken out: the first, the man about fifty, who till that time had lived unmarried, with an unstained reputation; and a young woman of seemingly singular modesty: the second, a stripling of seventeen, and a woman of thirty at least: the third, the woman a communicant, the man one of the catechumens that waited on the examination kept at the kirk for the younger sort, from January to about Whitsunday.¹

As was the case with antenuptial fornication, so too with simple fornication the penalty was variable. Skirling required three public appearances which was about the general standard.² George Wilson of Gladsmair was made to appear every Sunday for six months, perhaps for some reason not noted.³ The Presbytery of Edinburgh warned George Crookshank, who had already appeared twice for fornication, that he would have to appear four more times or receive the lesser excommunication.⁴ At his request James Smith of Ordiquhill was permitted to pay twice the normal fine and appear but once.⁵

The monetary penalty was two pounds in Kilmaurs,⁶ three pounds in Kelton,⁷ four pounds in Menmuir,⁸ eight pounds in Gladsmair,⁹ and ten pounds in Kilsconquhar,¹⁰ within the

¹ Morrison, Memoirs of Thomas Boston, Page 408.
² Skirling, 15 June 1718. MS.
³ Gladsmair, 1 April 1694. MS.
⁴ Presbytery of Edinburgh, 18 February 1702. MS.
⁵ Ordiquhill, 2 July 1727. MS.
⁶ Kilmaurs, 3 September 1699. MS.
⁷ Kelton, 24 November 1703. MS.
⁸ Menmuir, 19 August 1711. MS.
⁹ Gladsmair, 31 March 1695. MS.
¹⁰ Kilsconquhar, 12 December 1703. MS.

Parish of Glasserton it was successively two pounds, eight pounds, and five pounds and eleven shillings.¹

The following classifications of fornication have to do with repeated offenders. Relapse, trilapse, quadrrelapse and even pentelapse are to be found in the judicatory records. More than ten percent of the people who appeared before the kirk-sessions, whose minutes have been examined, on charges of fornication were previous offenders, as were over a third of those who appeared before the presbyteries selected for study.

Cases of relapse were usually settled by the kirk-sessions, and such cases accounted for approximately ten percent of the fornication processes to come before the fifty sessions whose records have been studied. Cases involving more than a single relapse passed on to the presbytery. More than one out of every four cases involving fornication in the twenty-five presbyteries selected were cases of trilapse, quadrrelapse, or pentelapse. This case before the Presbytery of Biggar is typical.

James Hownage being called appeared before the presbytery and did judicially acknowledge that he had fallen in fornication wt three several women whereupon being seriously exhorted by the moderator to lay his sin to heart it being equivalent to adultery & that in the bitterness of his soul he should mourn over his own villainess. He was referred back to the Session of Luningstone to satisfy an as adulterer.²

Here again it is true to say that penalties differed.

¹Glasserton, 27 November 1700, & 28 February 1703
& 1 March 1713. MS.

²Presbytery of Biggar, 10 April 1695. MS.

West Calder required six appearances for a relapse,¹ as did the Presbytery of Edinburgh.² The general practice was three appearances for each offence. The fine varied from four pounds at Fintray,³ to twenty pounds at Arbuthnott.⁴ Presbyteries such as Penpont required the delinquent to wear sackcloth.⁵

Those guilty of a trilapse in fornication also had to wear sackcloth.⁶ Nine appearances, as in Newtyle, was the general standard;⁷ but Eastwood once allowed six appearances.⁸ Since the cases generally went to the presbytery, no financial penalty was recorded in the minutes. For this offence the sentence of the lesser excommunication was often imposed.⁹ The Presbytery of Paisley described one such delinquent as a "very naughty person".¹⁰

Quadrelapse and pentelapses were infrequent. While Fintray only required nine appearances of a four time offender,¹¹ Ceres instructed Thomas Bell to appear for six months in sackcloth at the door and pillar.¹² Newtyle once gave out a penalty of fifteen pounds for a quadrelapse,¹³ and the

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- ¹West Calder, 3 May 1725. MS.
 - ²Presbytery of Edinburgh, 18 June 1707. MS.
 - ³Fintray, 5 July 1719. MS.
 - ⁴Arbuthnott, 3 June 1705. MS.
 - ⁵Presbytery of Penpont, 2 February 1716. MS.
 - ⁶Oyne, 2 June 1717. MS.
 - ⁷Wilton, 13 February 1698. MS.
 - ⁸Newtyle, 16 July 1717. MS.
 - ⁹Eastwood, 10 November 1692. MS.
 - ¹⁰Presbytery of Edinburgh, 6 March 1706. MS.
 - ¹¹Presbytery of Stranraer, 6 March 1717. MS.
 - ¹²Presbytery of Paisley, 27 July 1709. MS.
 - ¹³Presbytery of Paisley, 17 February 1714. MS.
 - ¹⁴Fintray, 14 February 1703. MS.
 - ¹⁵Ceres, 20 September 1696. MS.
 - ¹⁶Newtyle, 10 July 1720. MS.

Presbytery of Caithness turned its quadrelapse over to the civil magistrate.¹ Isobel Robertson, sixty-five years of age, appeared before the Presbytery of Kirkcaldy in sack-cloth for falling five times into fornication. She was sentenced with the lesser excommunication and given over to the secular authorities.²

The problem of fornication was one of great concern to the judicatories and perhaps more than one agreed with the Kirk-session of Inverarity who minuted the following.

And the session considering that it is to be suspected that some persons take the more liberty to commit the sin of fornication because the full penalties appointed by law are not enacted: therefore the session do resolve that in time coming the persons who shall be found guilty of the said sin in the parish shall pay according to the Act of Parliament King Chas 2d Parl: 1st Chap: 38. The pecuniary sums following, viz, for the first fault each baron 200 lib Scots, each gentleman 100 lib Scots and every other person of inferior quality 10 lib Scots for the use of the poor of the parish, and that these penalties be double toties quoties and that these be paid not only by the man but also by the woman according to their quality and the degree of her offence, the one without the prejudice of the other. And the session appoints this to be intimate to the congregation on Sabbath next that none in this parish may pretend ignorance.³

In the Parish of Kelso, as one example, there were so many cases to be dealt with that special procedures had to be approved by the Commission of the General Assembly.⁴

¹Presbytery of Caithness, 7 March 1705. MS.

²Presbytery of Kirkcaldy, 21 November 1706. MS.

³Inverarity, 20 August 1730. MS.

⁴Records of Commission of the General Assembly, 29 April 1708. MS.

The committee appointed to consider the reference from the Presbytery of Kelso reported that having

This is but another indication of the scope of the problem.

considered the said and had a representation of the whole affair laid before them. They found that through long vacancy of the Paroch of Kelse scandals are increased to such a number that they cannot be purged away in the ordinary course of discipline. Especially considering that some of them are sixteen years ago or there about and most if not all of them above eight years, and finding also that the persons lying under scandal are of different circumstances and consequently must have a different consideration in the exercise of discipline upon them. Some who were guilty of fornication have married since, and have walked orderly in a married state. Some of them are under the censure of the lesser excommunication, and that for diverse reasons, viz: for contumacy when cited to appear before the session or for refusing to submit to the appointments of the session in satisfying the discipline of the church, for their uncleanness and others for breach of Sabbath, some for other irregularities in their deportment. Therefore the said committee gave it as their opinion that such, as guilty of fornication, and have married since and have lived orderly in that state be convened before the session and upon profession of their repentance be rebuked and if edification require it that they appear before the congregation. Yet they are not to be constrained to appear oftner than once, nor at any particular place in the church, and as those that are guilty of fornication and still continue in an unmarried state considering the multitude of such in that place the committee give it as their opinion that they should not only be convened before the session above said, but that they should also be obliged to compare before the congregation. And as for such as are lying under the censure of the lesser excommunication the committee were of opinion that they should be convened before the session and upon giving evidence of their repentance that the session should take off the sentence judicially and make intimation thereof publicly in the congregation, and farther the committee offered it as their opinion that it might be expedient for the more effectually removal of these scandals, that there should be a day sett apart for solemn fasting and humiliation in that congregation and the mult-

It also illustrates the concern of the church. Even more astonishing is the "public brothel house ... kept at Dalmeilington" which was reported to Ayr Presbytery.¹

Children born out of fornication were sometimes abandoned by mothers who did not want them and/or wanted to evade church discipline. The monstrousness of this deed is ably documented by the following two cases from the Presbyteries of Middlebie and Carleoch.

she took the child to a waste in the ground of the bog and she had drawn the neck of the blanket, qch was about the child's head, over its face pinning it to its belt, she laid it down on a peat pitt brow and having cried to heaven for mercy to it; she tumbled it over with her foot unto the peat pitt and so left it.²

The corpse of an dead child was found by two women drawn out of a heap of stones by dogs in a place near to where she dwells, and that after all enquiry has been made by drawing womens breasts & other ways, yet none but she is or can be suspected as the mother & murder of that child.³

Both of these women received public rebukes and were turned over to the civil authorities. Mercifully there were very few of these cases recorded in the manuscripts studied.

implied scandals narrated as the cause thereof, and lastly that the Commission ordaine that this extraordinary methode be no preecedent to the ordinary course of discipline, and that intimation hereof be made from the pulpite.

¹ Dear, Old Church Life in Scotland. Page 329.

² Presbytery of Middlebie, 10 May 1699. MS.

³ Presbytery of Carleoch, 2 July 1711. MS.

Adultery was also a vexing problem for the church. In 1706 the General Assembly ordained "their Commission to apply to the government for the more effectual suppressing and punishing adulteries".¹ Since discipline was usually reserved for the higher judicatories, adultery accounted for only slightly less than three and one half percent of the cases settled by the kirk-sessions whose records were examined. With the presbyteries another picture is presented. In the records examined the presbyteries delivered judgment in 1,692 cases of which seven hundred twenty-six involved adultery.

The great majority of the cases were those involving first time offenders such as Katharine McFrer. Two witnesses testified to the Synod of Ross that they saw George Munro "lying and moving upon the said Katharine McFrer with her cloathes up and his breeches down and that when the deponents came to them the said George rose all in a sweat drawing up his breeches and she putting down her clothes".² Munro denied the charge.

There were a few recidivists of various types. The Synod of Galloway tried Thomas McNeillie for a trillapse³ and the Synod of Dumfries had a case of alleged quadrilapse.⁴ In addition there were those adulterers who were formerly convicted on various charges of fornication.

¹Registers of Acts of the General Assembly, 13 April 1706. MS.

²Synod of Ross, 9 April 1712. MS.

³Synod of Galloway, 11 April 1727. MS.

⁴Synod of Dumfries, 21 November 1704. MS.

As was true with fornication, the penalties often were greatly varied. The penitent was usually required to wear sackcloth.¹ Appearances before the kirk-sessions differed from twenty-three before the congregation of Fintray² to only eight appearances for Alexander Paten before the people of Dron, as the session were anxious to absolve him from a little known scandal.³ Ten appearances seemed to be the average sentence required.⁴ The Presbytery of Edinburgh only required two appearances of Janet Gray, noting that she was deeply penitent.⁵ Janet Pearson was absolved by Kirkcaldy Presbytery seventeen months after the offence was committed and after twenty-seven appearances.⁶ Presbyteries never imposed fines, but kirk-sessions did so quite often. A six pound fine was levied by Glasserton,⁷ while Ceres went as high as twelve pounds.⁸ At Foveran a case involving Ann Eyce and Alexander Gray was disciplined in this manner: she was required to make fifteen appearances but pay no fine as she was poor; he was required to make but ten appearances while his fine was

¹ Newnchar, 5 March 1702. MS.

Insh, 8 December 1723. MS.

Presbytery of Haddington, 15 June 1699. MS.

Presbytery of Stranraer, 3 May 1704. MS.

² Fintray, 18 May 1690. MS.

³ Dron, 10 February 1730. MS.

⁴ Kilmarnock, 21 April 1706. MS.

Fintray, 5 December 1714. MS.

Barry, 25 November 1709. MS.

Foveran, 27 May 1705. MS.

⁵ Presbytery of Edinburgh, 20 March 1706. MS.

⁶ Presbytery of Kirkcaldy, 21 August 1701. MS.

⁷ Glasserton, 6 October 1717. MS.

⁸ Ceres, 24 April 1695. MS.

set at twenty pounds.¹ Sometimes the lesser excommunication was passed against the delinquent² and for those who were contumacious there was the greater excommunication.³

Adulterers, too, were to satisfy discipline in the parish in which they resided unless the scandal was more flagrant elsewhere. Richard Birk who confessed adultery before the Presbytery of Edinburgh was to be censured in his own parish and in two others where the act occurred.⁴ The Synod of Fife in 1719 took the following action.

The synod taking into their consideration a reference from the Presbytrie of St. Andrews anent Mr. Thomas Muir, accused by Janet Thomson as guilty of adultery with her as the said reference at more length bears. The synod agreed that the scandal being most flagrant in the bounds of the Presbytrie of St. Andrews they be proceeded against by the said presbytrie and that when he shall be found guilty their appearance be in the Parish of Leuchars where they reside, and that they be appointed to appear also in publick a day or two in the Parish of Logie in the Presbytrie of Cupar where the scandal is said to have been committed to be rebuked and make publick profession of repentance before they be absolved.⁵

Many cases of adultery, which were to be handled for the most part by the synods, were preceded by intentional or unintentional desertions. When William Baird, an alleged bigamist, desired baptism for his child, he declared in his defence to the Synod of Lothian and Tweeddale that his

¹Foveran, 27 May 1705. MS.

²Presbytery of Paisley, 18 November 1719. MS.

³Presbytery of Penpont, 6 January 1725. MS.

⁴Presbytery of Cupar, 24 May 1715. MS.

Presbytery of Forfar, 17 February 1722. MS.

Presbytery of Aberdeen, 4 September 1701. MS.

⁵Presbytery of Edinburgh, 17 August 1701. MS.
Synod of Fife, 10 April 1719. MS.

first wife had deserted him about four years before his second marriage. The synod referred the case to the Lord Advocate and His Majesty's¹ Solicitor who declared that although the time lapse was great enough to claim desertion; Baird had failed to take the proper legal steps nor was he "married regularly" and "deserves to be censured".¹

In the case of Christian Young of Linlithgow the Commission of Assembly took a more lenient approach. Her husband, Edward Mugarland, had been abroad for twenty years and after returning but for a short time abandoned her again. She then declared her intention to cohabit with James Purdie. The Commission thought

fit to delay giving any particular advice in that matter at this time, But if it shall be found that the said Edward returns and claims his wife, the presbytery are to proceed in the affair according to the rules of the church as they shall judge most for edification.²

Things could become very complicated, if documentation of marriages was not forthcoming, as this case from the Synod of Angus and Mearns demonstrates.

Anent a reference from the Presbytrie of Forfar concerning Janet Mathurs bearing that her having been formerly given in to the said presbytrie by Mr. Hugh Maxwell minister of Forfar a representation anent Janet Mathers as guilty of uncleanness with Francis Petrie taylor in Forfar, which was looked upon to be adultery she producing some letters as from one James Fottis sometime gardiner in Pitscanlie as her husband, owning himself to be her husband, to whom she had born one or two children formerly, but as

¹Synod of Lothian and Tweeddale, 7 November 1695. MS.
²Records of Commission of the General Assembly,
11 August 1715. MS.

she always alledged in marriage with him; And she still owning herself to have been married to the said Fottis, but alledges he left her about seven years since, and went to Ireland and has not heard from him since and knows not whether he be alive or not; and consequently knows not whether her present sin be adultery or single fornication. And the presbytrie being desirous to find out the truth of the matter ordered enquiries to be made about the man; and Mr. Maxwell wrote a letter to Glasgow to one of the ministers there to write to any correspondent in Ireland about the supposed place where Fottis is said to be and having waited a long time has got no return, and expects no account about him. And further is thought she was never married with that man, but only said so and procured false letters to cover her former double fornication and to get her children baptized and that she now she says she is married that she may get revenge on Francis Petrie who would not marry her, by getting him to suffer as an adulterer with herself; she, if not married having fallen into a trillapse of fornication. And that the said Francis has satisfied as a fornicator and given obligation before his child was baptized to satisfy the discipline of the church further, if his being alive at the time he had to doe with her; which proof the presbytrie cannot find, finding no more than what's been above narrated and she lyes under scandal, without satisficing the presbyteric being straitned how to proceed in this affair with her they thought fit to refer this complex case to the reverend synod for advice; as the said reference at length hears. The synod having considered the affair do hereby according to the opinion of the committee of bills therein, refer the same back to the Presbytery of Forfar. And advise them to cause the said woman satisfy as an adulteress and enquire further anent the man she speaks of to have been her husband, and if he be alive or dead.¹

More often the documentation required was to certify the death of the deserter, thereby granting the freedom of the remaining spouse. This was true in the case of Elizabeth

¹ Synod of Angus and Morres, 21 October 1719. MS.

Law and Janet Reid which were heard by the Commission¹ and in the case of John Mitchell heard by the Synod of Lothian and Tweeddale.² Since Isabella Grieve was unable to prove to the satisfaction of that same synod that her husband who had gone abroad several years earlier was dead, her new marriage was declared "null and their cohability as man and wife is adultery".³

Of course there were those who used the pretended death of their mates as a defence for their adultery. When Margaret Fraser of Aberdeen went to visit her sister in Edinburgh in 1700 it took her husband of eighteen years less than five months to marry again. When Thomas Watson, the husband, was called before the session, he claimed that his wife died at Edinburgh. His proof was that "severalls of good credit told him so". In order to refute Watson's continued claim of his wife's death, the session paid her expences to journey north from Edinburgh. The result was the excommunication of Watson, who stood at the church door in sackcloth, and the banishment of his pretended second wife.⁴

Cases of adultery often involved the judicatory in other domestic problems. For example as a result of Bessy Crichton, wife of William Crahan, being found guilty of adultery with James Riddleston; the Synod of Dumfries were

¹ Records of Commission of the General Assembly, 20 March 1707. MS.

² Synod of Lothian and Tweeddale, 25 April 1728. MS.

³ Synod of Moray and Teviotdale, 22 May 1711. MS.

⁴ Stirton, Craith and Braemar. Pages 220 - 224.

asked

for advice asent what is to be done with the said James Hiddleston the adulter and William Grashame husband to the said Mussy Orichton the adulteress for removing them from one another they being door neighbours who keep very ill neighbourhood of late.¹

The synod advised the application that was made to the laird to dispossess Hiddleston.

Not only domestic problems arising from adultery, but the whole area of married life and its problems often fell to the church courts for arbitration.

As a preventive measure the General Assembly of 1704 made the following recommendation to its ministers.

The General Assembly recommends to ministers to be at pains to dehort their people from marrying with papists, and hold forth the dangerous effects thereof, and the General Assembly hereby instruct their Commission to apply to the Parliament for an act discharging such unequal marriages, and recommends to the several presbyteries to think upon some overture that may tend to prevent such marriages.²

The kirk-session sought to discipline transgressors of this act on the ground that marriage by a priest was irregular. On this charge Donald Gordon and Alexander Shaw were summoned to the Crathie Kirk-session.³

That the service of marriage itself was under the careful

¹Synod of Dumfries, 11 October 1720. MS.

²Registers of Acts of the General Assembly, 30 March 1704. MS.

³Stirling, Crathie and Broomax. Page 239.

watch of the judicatories is demonstrated by the Acts against Penny-Weddings. The Kirk-session of Corstorphine tried to regulate the day for weddings, restricting them to Thursday which was the most convenient day as it had been appointed for preaching. Persons marrying on other days were to pay fourteen pounds Scots to the poor. Apparently the session was not able to enforce this rule, as sixteen years later it was noted again in the minutes that it was the parish custom to marry on Friday and it was ordained that Thursday be used in time coming.¹

Still another way in which the church kept a watchful eye on marriages was by the custom of the proclamation of banns. The Assembly of 1690 ordered that this be done "three several Sabbaths in the respective parishes".² It was in accordance with this act that the Synod of Moray heard the case of Isobel Innes, who was married with only one proclamation, and rebuked her.³

Everything about the wedding was checked. William Noble and Margaret Pringle appeared before Melrose Kirk-session on charges of altering their marriage lines.⁴ John Ross and Isobell Miln appeared before the Synod of Angus and Mearns on charges of being clandestinely married.⁵ A deposit was often received with the promise that the rules of the church would be followed, such as the eight pounds

¹ Selway, A Mid-Lothian Village. Page 19.

² Register of Assembly, 29 October 1690. MS.

³ Synod of Moray, 1 November 1722. MS.

⁴ Ross and Miln, Melrose Parish Registers. Page 168.

⁵ Synod of Angus and Mearns, 17 April 1722. MS.

and two dollars deposited by John Gray with the Session of Currie.¹ If there was a breach of the rules governing the preparation for or the service of marriage, the resulting "irregular marriage" called for disciplinary action.² Usually such an offence received a sessional

¹Currie, 19 November 1699. MS.

²Synod of Lothian and Tweeddale, 7 November 1721. MS.

The synod did and hereby do disapprove of the sentence of the Presbytery of Edinburgh only to rebuke Mr. Drummond before them and find that the brethren dissenting had reason for so doing in regard the sentence was too mild considering the greatness of the scandal he having as appears from the presbytery register. 1^{mo} Acknowledged that he married Sir James Campbell's daughter without her fathers consent or countenance. 2^{do} That he prevailed with the session clerk to give a warrand for proclamation without the said Sir James Campbell's consent and likewise to antedate the warrand eight days. 3^{do} Prevailed with the precentor to proclaim them in his own room upon Saturday and to give an attestation on the foot of the warrand bearing that they were proclaimed in the New Church, which was never done, and that the said Mr. Drummond made himself master of that attestation upon the Saturday and made use of the same to induce a minister of the established church to celebrat the said marriage. 4th That the said Mr. Drummond went from Edinburgh upon the Lord's day evening to the Queens ferry where he cross'd the water at night and went to the Gate of Pittliver and brought the lady to the Queens ferry where they landed the next morning; By all which the forsd Mr. George Drummond has invaded the right of a parent over his child, has induced servants of the church to attest falsehoods in the exercise of their offices, not only contrair to all good order, expresse laws of the kingdom and acts of the General Assembly, but to the violation of that faith and integrity which is so necessary to the preservation of Christian & humane society and this accompanied with prophanation of the Lords day and besides that the said Mr. George Drummond is an elder of this church: And further the synod did and

rebuke,¹ although the presbytery dealt with a few cases.² Altogether these "irregular marriages" accounted for less than one percent of the cases heard by the church courts whose records were examined. The fines administered were infrequent and without uniformity. Aberlady Kirk-session fined Peter Wardin four pounds,³ while the Session of Mearns demanded twelve pounds from David Wyllie.⁴

Other family affairs also came to the notice of the kirk-sessions. Currie Kirk-session rebuked Jean Kilpatrick and reported her to the Justice of the Peace for quarrelling over her children.⁵ George Stoorie was rebuked by the Session of Carriden for not having his children at school.⁶ Edward Stinson of Mearns was turned over to the civil magistrate for not providing for the care of his children.⁷ In the same parish William Todd and his wife received a rebuke from an elder for a family fight.⁸ In Arbutnott,

heroby do appoint the register of the Presbytery of Edinburgh for the preceeding half year to be transcribed and the reasons given in by the dissenting brethren for their dissent and the answers of the presbytery to those reasons of dissent to be kept out of the said register and the synod appoints this their sentence to be put into the attest, of the register of the said Presbytery of Edinburgh.

- ¹ Cunnock, Old, 11 March 1711. MS.
- Eastwood, 9 January 1715. MS.
- ² Kilconquhar, 3 June 1711. MS.
- Presbytery of Cupar, 22 March 1715. MS.
- Presbytery of Chanonry, 5 September 1720. MS.
- Presbytery of Penpont, 7 November 1716. MS.
- ³ Aberlady, 9 November 1707. MS.
- ⁴ Mearns, 3 March 1728. MS.
- ⁵ Currie, 10 June 1699. MS.
- ⁶ Carriden, 28 March 1697. MS.
- ⁷ Mearns, 11 September 1698. MS.
- ⁸ Ibid., 30 July 1695.

John Spence was admonished by the session for "cursing his wife".¹ The woman, who had "provoked her husband", and the man, who had in return "beat his wife", were both rebuked by the Session of Newmachar.²

Not only did the judicatories of the church regulate the steps to be taken in order to marry, prescribe the service, and sort out family problems; they were equally determined that the marriage should last. In 1704 the Synod of Fife was called upon to arbitrate the dispute between Katherine Baxter and her husband, Andrew Thomson. "She had absented herself from said husband for some time, and now desiring that he would receive her home again, he absolutely refuses the same".³ When a similar case was heard by the Presbytery of Hamilton later that same year, it directed the Kirk-session of Avondale to rebuke the husband

and in case he continue obstinate in refusing reconciliation with his wife that he be rebuked from the pulpit and declared incapable of sealing ordinances till he declare his sense of his former unchristian carriage, and his willingness to be reconciled to his wife.⁴

In the case of a wife who would not cohabit with her husband Kirkcaldy Presbytery

did lay out to her, her sin of deserting her husband & appointed her to cohabit with him, called John Hendersons compared the presbytrie appoint him to receive home his wife & to carrie to her as becomes a loving husband.⁵

¹Arbuthnott, 29 January 1699. MS.

²Newmachar, 8 October 1721. MS.

³Synod of Fife, 12 April 1704. MS.

⁴Presbytery of Hamilton, 26 September 1704. MS.

⁵Presbytery of Kirkcaldy, 23 October 1701. MS.

The Deerness Kirk-session received a letter from the minister of Canisbay about Margaret Macbeth. As a result, they appointed their "officer to warn her to go home to her husband, and to remove out of this parish".¹ Contrary to this usual approach was the action taken by Biron Kirk-session in 1694. When Elspet Fotheringham "would not cohabit with her husband", they applied to the civil magistrate to remove her from the parish.²

*** *** ***

In addition to the scandalous carriage, fornication, and adultery which were disciplined by the courts of the church, there were several other sexual offences that appeared infrequently in the records examined.

In the manuscripts studied there were a total of fifty-four cases of incest. Three cases were considered by the General Assembly, nine by its Commission, ten by the synode, twenty-six by the presbyteries, and six by the kirk-sessions. The Confession of Faith defines incest in the following manner.

Marriage ought not to be within the degrees of consanguinity or affinity forbidden in the Word, nor can any such incestuous marriages ever be made lawfull by any law of men, or consent of parties, so as these persons may live together as man and wife. The man may not marry any of his wives kindred nearer in blood than he may of his own, nor the woman of the husbands nearer in blood than of her own.³

¹ Proceedings of the Orkney Antiquarian Society, Volume IX.
Page 50.

² Biron, 9 September 1694. MS.

³ Acts of the Parliaments of Scotland, Volume IX. Page 128.

The General Assembly of 1696 declared "the marriage betwixt James Pitcairn and Janet Curss unlawful, being within the degrees prohibite".¹ Andrew wrote to his wife that the Assembly of 1710 had resolved that "marrying a person that had committed fornication with the man's grand-uncle was incest".² The Commission in 1705 had declared in the case of John McKensie that his marrying of his first wife's grand-niece was an "incestuous commixtion",³ as was William Rossie's adultery with his "wife's sister's daughter by the mother but not by the father side".⁴ William Stevenson was accused of incest with his wife's niece by Angus and Mearns Synod,⁵ as was John Baxter who married his former wife's grand-niece, and Robert Hunter who married a woman who had brought forth a child to his grand-uncle.⁶

Some cases of incest occurred only after one of the partners in marriage had died.

John Laing weaver in St. Andrews and Helen Laing his daughter have both confessed judicially before the Kirk-session of St. Andrews that they have lyen nightly in the naked bed together since the death of the said John's wife being about the space of seven years (the said Helen being about fourtie years of age) but denyed carnal dealing together.⁷

Marion Craig was judged guilty of "incest with James Mason

¹Acts of General Assembly, 1696.

²McGrie, The Wodrow Correspondence, Volume I, Page 11.

³Records of Commission of the General Assembly,

13 April 1705. MS.

⁴Ibid., 13 November 1713.

⁵Synod of Angus and Mearns, 23 April 1703. MS.

⁶Ibid., 23 October 1729.

⁷Synod of Fife, 29 September 1705. MS.

tenant in Clachanshiells both in the Parish of Fetter-
esso; the said woman being the widow of the said James
Hason his father's brother".¹

The members from the Presbytery of Lanark,
presented a reference therefrom to the Commission
of the General Assembly for advice, how to pro-
ceed to censure in the case of John Somervell
in the Paroch of Camwath, who had confest him-
self guilty of uncleanness with one Janet Graham
his deceased wives brothers daughter.²

On occasion a confession of incest was brought about
by the death of the wronged party. After her mother's
death one woman confessed to Lanark Presbytery "with
tears her sorrow for her sin" in committing incest with her
mother's husband.³ After the death of his wife, John Scot
confessed to the Presbytery of St. Andrews his incest with
"Mary Scot his niece by Alexander Scot an adulterous bas-
tard son of his fathers".⁴

Incest was a ground for divorce. Andrew Skinner's wife
had been excommunicated as being guilty of incest and adul-
tery with his brother, and Andrew had been prohibited to
cohabit with her. When he was not able to procure a divorce
because of lack of money, the Synod of Ross recommended to
the kirk-session "to give something to carrie on the process".⁵

¹Synod of Angus and Mearns, 22 April 1719. MS.

²Records of Commission of the General Assembly,
4 January 1711. MS.

³Ibid., 10 March 1725.

⁴Ibid., 11 August 1725.

⁵Synod of Ross, 6 November 1711. MS.

For this grave offence the sentence administered by most presbyteries was the greater excommunication, as in the case of the Presbytery of Paisley which disciplined four cases in ten years.¹ When Margaret McMinshoballan was found guilty of incest by Calthness Presbytery, they sent her to prison and reminded her that the civil laws required the death penalty.² Banchory-Ternan Kirk-session regarding Alex Burnet "as a mad man and not an object of kirk censure left him under the scandal". His aunt with whom he was guilty of incest made twelve appearances.³ Jean Bowsby was required to stand at the door of Northwick Church from the second to the third bell and then before the congregation in the public place.⁴ Offenders were sackcloth.⁵

The scandals of rape, bestiality and sodomy appear even less frequently in the registers of the judicatories.

Of the 2,379 cases of discipline appearing in the kirk-session records that were studied, there was only one case of rape. James Hadden was charged thus by Errol Kirk-session in 1707. He was thought to have been drunk at the

¹ Presbytery of Paisley, 27 August 1701 - 10 May 1710. MS.

Presbytery of Dunkeld, 11 January 1715. MS.

² Presbytery of Forres, 7 July 1725. MS.

³ Presbytery of Calthness, 15 September 1698. MS.

⁴ Banchory-Ternan, 17 October 1725. MS.

⁵ Northwick, 22 July 1694. MS.

Presbytery of Inverary, 19 April 1692. MS.

Presbytery of Perth, 30 January 1706. MS.

time.¹ The presbyteries studied handled six cases. Three of them occurred during a nine year period in the Presbytery of Perth. The lesser excommunication was administered.² One case of rape which achieved notoriety was that of Captain Charters which was brought before the Assembly and its Commission at least eight times in 1702. He was accused of several attempted rapes of a young girl and a married woman and of a successful rape within the Parish of Lings.³ The process of excommunication against him was dropped on his promise of repentance and reformation.⁴

The single case of bestiality to be settled by a Kirk-session whose records were examined was in Kirkcinner. The offender was given to the sheriff for a civil trial.⁵ The presbyteries heard five such cases in which the offenders were excommunicated and bound over to the civil authorities.⁶

Only one case of sodomy was recorded in the registers of all the judicatories examined from Kirk-session to General Assembly. This occurred in 1712 and the offender was put

¹ Dron, 14 September 1707. MS.

² Presbytery of Perth, 4 October 1710 - 23 July 1718. MS.

³ Records of Commission of the General Assembly,

12 June 1702. MS.

⁴ Ibid., 3 December 1702. MS.

⁵ Kirkcinner, 6 April 1713. MS.

⁶ Presbytery of Haddington, 29 August 1699. MS.

Presbytery of Hamilton, 2 May 1693. MS.

Presbytery of Chanonry, 12 June 1707. MS.

under the greater excommunication by the Presbytery of Dunelm.¹

Processes against incest, adultery, trilease in fornication and other extremes of sexual immorality were only to be initiated by the Kirk-sessions according to the Form of 1707. Final judgement was to be rendered by the Presbytery or a higher judicatory.

The scandals involving sexual immorality consumed much of the time of the church courts and accounted for the great majority of the cases. All types of sexual offences were dealt with, as were all the problems of family life. As with the lesser scandals, penalties varied from judicatory to judicatory.

In the next chapter we will discuss the problems of charging and witchcraft.

¹ Presbytery of Dunelm, 5 August 1712. MS.

CHAPTER SEVEN

Charming and Witchcraft

A subject, which has gained great notoriety in the history of the church in Scotland, is that of charming and witchcraft. In the sixth chapter of the Form of Process it is listed along with incest, adultery, trilapse in fornication, murder, atheism, idolatry, heresy and error, and schism and separation from the public ordinances; as a scandal whose process is begun by the kirk-session but determined by a higher judicatory. In such cases the kirk-sessions were instructed to assess the facts of the case and to deal with the accused to confess his scandalous ways. This accomplished, an extract of the proceedings was to be forwarded to the presbytery. If no confession was made then the kirk-session had to seek the presbytery's permission to lead probation of the case. It was also in the presbytery's hands to prescribe penance and to grant absolution.

The cases of charming and witchcraft which are to be found in the church registers of the years 1690 to 1730 are few indeed. The total number of processes to be found in the manuscripts examined are as follows: Commission of the General Assembly - one, synods, - one, presbyteries - twelve,

and Kirk-sessions - fifteen,

On the 30th of January 1699 the committee for overtures recommended to the Assembly

that it is fit, that former acts of General Assemblies concerning witch-craft were revived, and recommended to the care of all presbyteries, particularly act Assembly 1640, July 29, Sess. 2, Assembly 1643, August 19, Sess. ult. and Assembly 1649, August 6, Sess. ult.

2. And that it were worthy of the Assemblies consideration to think upon, and prescribe some uniform method, for censuring ecclesiastically such as shall be convict of witch-craft or charming, and their consultants who escape civil punishment.¹

In answer to this overture the Presbytery of Paisley gave it as their opinion

that according to former act of Assembly there should be a committee of lawyers, ministers, and physicians, who should give their opinion of what may be look'd upon to be solid evidences of witchcraft beside either proven or confessed compact with the devill. As also what is to be done with fortune tellers and the presbyteries of opinion that this will much pave the Assemblies way in condescending upon some uniform method for ecclesiastick censure of such persons. The presbytery is also of opinion yt all who are convict of charming or witchcraft should be censured with excommunication and that consultants with such persons be suspended from sealing ordinances upon once or twice consulting and declar'd scandalous till they seek for reconciliation and if they be found habitual slighers or continue to do so after warning that they be censured with greater excommunication and the presbys opinion is that mins be appointed to explain to their hearers and admonish them of ye nature and danger of charming, witchcraft, consulting divination fortune-telling &c that afterwards all such as are guilty may be inexcusable.²

¹ Acts of Assembly, 1699.

² Presbytery of Paisley, 24 January 1700. MS.

Apparently, however, no decision was reached in the matter for in 1706 the Assembly's Commission recommended to the judicatories that they apply to the civil courts to put in operation the acts of "Queen Mary Parliament ninth, chapter seventy third, and James the Sixth Parliament seventh, chapter one hundred and fourth".¹

The art of charming was put to several different purposes, some of which are best described as "folk medicines", while others were but superstitions. At Halkirk in 1697, Alexander Harvie confessed to having consulted with "neighbourhood the charmer, and that at his desire he had applied some things to his horse and said some words when he did it".² The Kirk-session of Arbutnott cited David Crab for his treating of a "distemper of head & heart". The following is his description of the patient's treatment.

First he rubbed back her head, then he rolled a hose wt an woollen thread about her head and then desired to know yt he would do as to ye trouble about her heart, for which he again rowed ye hose wt ye woollen thread about her middle & about each of her arms & desired she might take so much bristone & drink it with sweet milk for three days together every morning wt was all he did.³

He denied the use of any words as a charm or of having made a compact with the devil, saying that he had only treated the sufferer as he had previously done for himself with a similar complaint. The Presbytery of Caithness cited a

¹Records of Commission of the General Assembly,
4 December 1706. MS.

²Smith, Strathendrick. Page 29.

³Arbutnott, 5 September 1700. MS.

man who cured "persons dangerously sick with grass".¹ Joan Warrender appeared before the Kirk-session of Strichen for "endeavouring to cure the fevers by putting a stocken about them",² John Buchanan of Cornstario,³ and Jean Moncrief of Auchtermuchty⁴ were both disciplined for consulting charmers about the health of their children.

In the past, as today, anxious parents were willing to try any remedy in hope of a cure for their ailing child. Agnes Hood took Jean Moncrief's child in her arms, and

carrying it about an oaken post expressing these words oaken post stand thou, bairns may turn thou in the name, of the Father, of the Son and of the Holy Ghost turn the bairns aw right.⁵

John Reid of Tawibland bound his son to a stone near Drummond Castle for a night when the boy was "seized with a distraction".⁶

Peter Kheive was reported to Foveran Kirk-session "for superstitious kneeling about and embracing ye corners of ye kirk walls". He was trying to cure a tooth-ache.⁷ Archibald Keddle was summoned to the Presbytery of Kirkcaldy for using a staff from Ireland to cure beasts.

He allent yt any staf yt had grown in Ireland
if it be stroaked upon a beast sting wt ane

¹ Presbytery of Caithness, 8 September 1708. MS.

² Strichen, 21 October 1705. MS.

³ Smith, Strathendrick. Page 31.

⁴ Auchtermuchty, 11 March 1711. MS.

⁵ Presbytery of Cupar, 27 February 1711. MS.

⁶ Ibid., 24 October 1710.

⁷ Foveran, 15 December 1706. MS.

adder or oyr venomous beast it would make ye
venom come downward & he said yt ye reason was
because yr is no venomous beasts in Ireland.¹

The skills of the charmers were put to work in other
ways. John Beattie was summoned to the Session of Wackop for
"consulting ye wise woman anent stolen goods".² A
Galston man was summoned for consulting a "supposed wizard
in order to discover goods stolen from him".³ The following
minute appears in the register of Waleston Kirk-session.

James Wyld being called upon and compeared
being interrogate 1^{mo} If he had money stolen
from him. Answered he had money stolen from
him. 2^{do} If he went to a dumb person to enquire
after the said money. Answered he went to a
dumb woman in Edinburgh to enquire after the
said money. 3^{do} If he went to one in Edin-
burgh who was a Professor of Judicial Astrologie.
Answered. He did. 4^{do} If by any of their

¹ Presbytery of Kirkcaldy, 2 August 1698. MS.
Synod of Fife, 6 April 1698. MS.

The following account from the synod's records gives an inter-
esting account of the "work" of Reddie and others like him.

Archibald Reddie being again called, compeared,
and ther being severall kirk-sessions within
this province, containing instances of his
charming beasts, discovering secrets, telling
of things stolen, and such lyke practices, and
that he made a trade of this through the countrey,
for gaining money, and being interregat by
the moderator, upon the severall informations
given in against him; he confessed, that being
called to Western saulin for curing some of their
beasts, he had cloven a cows tail, and mixed the
blood with salt and rubbed the coves back there-
with and told the people that by tomorrow that
the sun rose, the cow would be whole, if they
would apply the cure before the sun rose. And
that he bade them make a powder of routree
bark, taken off the North syd of a tree beneath
the ground, growing in another Laird's land, and
mix it with ale or milk and poure it into the cow.

² Presbytery of Middlebie, 24 May 1699. MS.

³ Edgar, Old Church Life in Scotland, Page 270.

directions he went upon the housetops in his gown to draw draughts. Ans: not by their direction but by the direction of some others. 5th By whose direction he did it. Answered that he could not tell at this time. 6th If he had a glass that would represent the face who had stolen that money. Answer: He had a glass that some said would do it. But declared that it did not. 7th Being interrogate if he was sorry for using the foresaid practice to regain money. Ans: He was sorry. 8th Being interrogate if he would ever use such practices again. Ans: He would not use them.¹

One method of discovering a thief made use of a Bible and a key. In 1691 Katharine Dowall of Edinburgh confessed she endeavoured to catch a thief by charming.

She took the Bible and put the key on the 50 Psalm at the 18 verse and named persons names and it stood still, and when she named Beessie Fisher's name the Bible moved, the boull of the key fell from her finger and that both tymes answered to that name when she did it.²

In the case of Catharine Campbell of Kilmichell the key is said (perhaps mistakenly) to have been placed at verse fifteen of the fiftieth Psalm. It was said "that the key and the bible of their own accord would turn about" when the guilty party was named.³

Another method of discovering a thief was given to Janet bog of Blacklenans.

She had been advised to write the names of suspected persons on little bits of paper, place them on water, and discover the name of the guilty person through its sinking before the others.⁴

¹Walston, 6 May 1716. MS.

²Lorimer, The Early Days of St. Cuthbert's Church, Edinburgh. Page 131.

³Presbytery of Inverary, 6 September 1692. MS.

⁴Meikle, The History of Alva Parish Church. Page 137.

When a "dumb person" in his parish built up a brisk trade in giving account of stolen goods, the Perth Presbytery advised James Gillespie, minister at Arngask, to exhort his people against "such an hellish practice as to consult wizards ... severely threatening any who will dare to be guilty of the like for the future".¹ Marion Glen of Eastwood used charming in trying to discover who she would marry.² In Whitehouse, David Robertson resorted to charming when his wife, who had just given birth to a child, was found to be without milk in her breasts. The question was, what other woman had taken it from her!³

The faculty of second sight, of being able to tell the guilty and the future, was evidently not always pleasing to its possessors. A minister living near Inverness wrote that

they are troubled for having it, judging it a sin and that it came from the devil, and not from God; earnestly desiring to be rid of it, if possible; and to that effect, have made application to their Minister, to pray to God for them, that they might be exonerated of that Burden. They have supplicated the Presbytery, who judicially appointed publick Prayers to be made in several Churches, and a Sermon preached to that purpose, in their own Parish Church, by their Minister; and they have come before the pulpit, after Sermon, making Confession openly of that sin, with deep sence on their Knees; renounced any such Gift or Faculty which they desired the Minister to pray for them; and this their Recantation recorded.⁴

¹ Presbytery of Perth, 19 December 1716. MS.

² Eastwood, 10 November 1692. MS.

³ Meikle, The History of Alyth Parish Church. Page 135.

⁴ Aubrey, Miscellanies. Pages 201 - 202.

The use of Christian symbols, such as the names of Deity, and the Bible, was common in charming. The Presbytery of Kirkcaldy administered discipline in a process where the Lord's Prayer had been written backwards with the hope that the possessor might use it to drive away evil thoughts.¹ Jean Brown of Penninghame who was interrogated as to whether "she converses ordinarily with spirits", gave answers that illuminate her delusions which apparently took the form of an intertwining of the carnal with the sacred. Her confession contains statements such as: "the spirits ly with her ordinarily after that manner that men and women ly when they beget children"; "the spirits say they are Father Son and Holy Ghost"; and "that its that spirit she lyes with carnally that she serves as her God, ... that that spirit made heeven and earth".² At Kirkcinner it was discovered that the superstitious practice of burning the straw from the bed of the dead was being carried out as part of family worship.³

Witches were credited with having a variety of powers as the following charges illustrate.

he had put a hen-tree belt about John Orr which he appointed to be worn nine nights in order to cure frigidity, ... he taught one how to make his own corn grow, and his neighbour's to go back, ... for the making his own corn to grow to sour milk amongst it on Beltane day, ... he cured convulsion fits by pulling

¹ Presbytery of Kirkcaldy, 8 May 1707. MS.

² Presbytery of Wigtown, 30 January 1706. MS.

³ Kirkcinner, 4 April 1703. MS.

some haizes out of the eyebrows and paring the nails of the diseased person, which he bound up in a clout with one half-penny and layed in a certain place, asserting that whoever should find would take the disease off the person that had it, ... for curing John Hunter's beast of the sturdies he taught to cut off a stirk's head and boyle it, and burn the bone to ashes, ... one complaining that he had not gotten many fishes, he had told him to take the sailing pin out of his neighbour's boat and he would get fish anew;

... under a very sore and unnatural like distemper, frequently seized with strange fits, sometimes blind, sometimes deaf and dumb, the several parts of her body sometimes violently extended, and other times violently contracted, and that these several weeks past she hath disgorged up a considerable amount of hair, folded up straw, unclean hay, wildfowl feathers, with diverse kinds of bones of fowles, together with a number of hot coal cinders burning hot, candle grease, gravel stones, ... she continues to fall into a horrible and unaccountable fits, wherein she has a great struggling. Sometimes she turns so rigid that her joints are inflexible; sometimes becomes so prodigiously weighty that she cannot be moved, her tongue fearfully drawn out, and again drawn back into her throat. Sometimes she becomes utterly insensible as to all bystanders, and then distinctly conscious of severall persons of the bounds whom she constantly affirms to be her tormentors; and when any of them delated by her brought before her, their touching of her, her seeing of them, yea even the speaking of them absent, throws her into the forementioned fits. And this all who see her judge, yea even physicians have declared it, to be pre-natural, phisidgns from the devil and his instruments.¹

having a pin in her kippie foot (the end of the rafters of her house), by means of which she could draw milk from the cows of her neighbours. she could also interfere with the poultry of others to increase or diminish the supply of eggs. One of the most convincing parts of the evidence against the accused was, that the minister's horse, which was sent

¹ Murray, Kilmacollm. Pages 110 - 116.

to bring her to trial, trembled with fear when she mounted and sweated drops of blood.¹

The judicatories were continually warning against such practices. In 1692 the Presbytery of Inverary appointed

each minr from pulpit to make intimations that whosoever is found guiltie of charmes here after shall be severely punished & fined by the civill magistrat & underlie the severitie of church discipline, and in regard the poor vulgar is deceived by thinking that there is noe sin in charmes consisting of scripturall word as the first chapter of the Gospell of John &c. that each minr hold forth that such charmes is the highest profanation of the work of God.²

In 1695 at a meeting of Caithness Presbytery it was carried by a unanimous vote to request both heritors and magistrates to banish all, who tampered with sorcery and witchcraft, from the parish of Wick.³ Thirty years later the Synod of Morso and Teviotdale continued the practice of warning the people of the evils of charms and witchcraft.⁴

It was the practice of the presbyteries to turn those guilty of excessive charming or witchcraft over to the civil authorities. For his charming John Dougall of Inverkip was to be reported to the "sherreff".⁵ The Presbytery of Caithness had all those suspected of possessing supernatural powers put under arrest with a view to their trial.⁶ Jean Crum, a charmer in Kirkcubright, was "deleated to the civil magistrate to be punished according to her desert."⁷

¹Black, A Calendar of Cases of Witchcraft in Scotland, 1510 - 1727. Page 61.

²Presbytery of Inverary, 6 September 1692. MS.

³Donaldson, Caithness in the 18th Century. Page 36.

⁴Synod of Morso and Teviotdale, 17 October 1728. MS.

⁵Murray, Kilmacolin. Page 111.

⁶Donaldson, Op.Cit., page 37.

⁷Presbytery of Wigtown, 19 July 1698. MS.

The Commission of Assembly appointed a sub-committee to wait upon the Lord Advocate about the affair of the witches of Pittenweem.¹

The civil authorities took a more lenient and objective attitude towards the offenders than the men of the church. The Queen's Advocate found Jean Brown of Kirkwack "more fitt for a bedlam than a criminal process".² In 1712 the King's Advocate General, Robert Dundas of Arncliffe, quashed the proceedings against the supposed witches of Caithness.³ However, the civil authorities also carried out the letter of the law at times. The Commission trying the notorious case of Christian Shaw (see page 182, the girl tormented by fits) condemned four women and three men to the fire. Six of them burned at the Gallow Green of Paisley. One man had committed suicide while in prison awaiting execution.⁴ In Kirkcudbright in 1698 a commission was to "try and if guilty, adjudge to death Elspeth M'Ewen. she was strangled and burnt on the 24th of August".⁵ Confessed and suspected witches were also in danger of their lives from the general public. In Kilmacollie "witches" were found murdered in the fields,⁶ and a mob in Thurso beat a woman to death.⁷ The last

¹ Records of Commission of the General Assembly,
7 June 1704. MS.

² Presbytery of Wigtown, 30 January 1706. MS.

³ Donaldson, Caithness in the 18th Century. Page 38.

⁴ Warrick, The Moderators of the Church of Scotland. Page 81.

⁵ Black, A Calendar of Cases of Witchcraft in Scotland, 1510 - 1727. Page 81.

⁶ Murray, Kilmacollie. Page 115.

⁷ Donaldson, Op.Cit., page 38.

recorded case of the burning of a witch in Scotland was at Bornoeh in 1722.¹ All the official executions had the tacit approval of the church.

Of course the church had its own methods of dealing with sorcerers. In the cases of minor offences appearing in the kirk-session manuscript records that were studied, half received a congregational rebuke and the other half a rebuke in the privacy of the session. Agnes Hood, who refused to see any wrong in using charms to cure a child, had the lesser excommunication pronounced against her by Cupar Presbytery.² Jean Brown, visited by spirits and pronounced "fitt for a bodiam" by the Advocate, received the greater excommunication.³ The presbyteries also had recourse to days of fasting and prayers.⁴ One last tool was available to the judicatories and this was to isolate such offenders from the community by a boycott. This was done to John Greivie by Caithness Presbytery⁵ and by the Presbytery of Wigtown against Jean Crum.⁶

What were charming and witchcraft to the eighteenth century are but folklore and mental disturbances to the twentieth. The Kirk took the problem seriously and required the severest of punishments for the worst offenders.

¹Henderson, The Scottish Huling Elder. Page 128.

²Presbytery of Cupar, 27 February 1711. MS.

³Presbytery of Wigtown, 30 January 1706. MS.

⁴Murray, Kilnecole. Page 116.

⁵Donaldson, Caithness in the 18th Century. Page 37.

⁶Presbytery of Caithness, 9 September 1702. MS.

⁶Presbytery of Wigtown, 19 July 1698. MS.

In the next chapter we will discuss how the minister, elders and other church officials were treated by the discipline of the church.

CHAPTER EIGHT

The Church Officials

All were subject to the discipline of the church, and neither the minister nor his office-bearers were exceptions. Gilbert Hule, writing in 1690, had this to say about Presbyterian ministers:

They must walk by the rule set down in the word; and if they exceed that bounds, they may be curbed by superior judicatories: Or if their insolence amount to the disturbing of the peace, the Magistrate may restrain them.¹

In the kirk-session records examined, twenty-nine cases appear involving ministers, elders, clerks and church-officers. In other words one out of every eighty-two processes involved churchmen. Thirty-seven such cases appeared in the presbytery registers. This represents one in forty-five of the processes.

The visit of the presbytery to his parish for the purpose of prying censures, as recorded in his diary by John Turnbull, was a normal event in the life of the church.² The presbytery made regular visitations to each church in its

¹Hule, A True Representation of the Presbyterian Government. Page 12.

²Paul, The Diary of John Turnbull. Page 408.

bounds to determine the state of the church's life. A great many things were inquired into such as property, fabric, Bibles, life and conduct of the elders, etc. The minister was removed and the elders questioned as to his diligence and way of life. Some or all of the following questions might have been asked.

Is he a haunter of ale-houses? Is he a sweaker of small minced oaths, such as, before God it is so? I protest before God, or Lord what is that? Saw ye him ever drink healths? Is Saturday his only book-day or is he constantly at his calling? Doth he preach plainly, or is he hard to be understood for his scholastic terms, matter, or manner of preaching? What time of day doth he ordinarily begin sermon on the Sabbath, and when doth he dismiss the people? Doth he ever censure people for idleness, breach of promise, or backbiting? Doth he restrain abuses at penny weddings? Doth he carry any way partially so that he may become popular?¹

The minister's life was thus thoroughly investigated. He was expected to live the same sort of blameless life as his parishioners. In 1730 Adam Petrie made the following injunction to ministers in regard to their deportment.

Ministers should shun all unnecessary and familiar converse with worldly and wicked Men, lest they be infected with them; I do not mean here that they are to look upon them as if they were to be neglected by them; for a Minister ought to exhort them to forsake their evil ways, and to Repent and turn to the Lord, leaning on the Righteousness of Christ, and to shew unto them their danger in going on in their wicked Courses, and to pray for them; and this should be done in a friendly Civil Way; and that privately, using all Civility and Tenderness towards them. ... I shall advance some Directions how to manage a Re-

¹Edgar, Old Church Life in Scotland. Page 231.

proof. Be sure that the Person deserves a reproof, and that you are able to make it appear; and also, see that the Person be fit for the same; for there are several unfit for the same, as Idiots, drunk Persons, and also Persons in the height of Passion, are unfit for Reproof. It will be fit sometimes, not to reprove directly, but by giving signs of your Displeasure of the same; or you may reprove by Similes, as the Prophet did David for his Adultery and Murder; or you may cause the Scripture reprove the same, and it must be given with all Evidences of Respect, and with Meekness. If then he will not hear you, then you are to take two or three with you, (if the Crime be great) and if, after all, he prove obstinate, you are to tell the Church.

A minister should not detract from any, nor give a bonded Ear to Slanders; but endeavour, to the uttermost, to set forward Piety, Quietness, Peace and Love, among Christians, especially among those committed to his Charge, or may be committed to the same. A Minister must use all Prudence, Modesty, Discretion and Love, in reconciling Differences among his People, and for rectifying Disorders, and bringing them off from bad Practices.¹

At least one minister, Thomas Halyburton, conducted a private examination of himself. He addressed the following questions to himself and recorded them in his diary.

1. Are daily sins, sins of infirmity, searched, observed, weighed, and mourned for?
2. Is there care taken to exercise faith distinctly in order to the pardon of them?
3. Is peace taken, when not powerfull by the Lord spoken?
4. Does the impression of the necessity and excellency of Christ's blood decay?
5. Are the experiences of its use and efficacy distinct as before?
6. Am I formal in worship, duties secret, private, craving blessing to meat, returning thanks, prayer, meditation, and reading, &c.
7. Is there due care of educating my family?
8. Are rods observed, and suitably improved?

¹ The Works of Adam Petrie. Pages 21 - 23.

9. Is there due concern for the flock? and singleness and diligence in ministerial duties, prayer for the flock, visiting the sick? &c?
10. Is there sympathy for afflicted saints and churches?
11. Are the sins of the day mourned for?
12. Is the voice of the red beard calling to
 - (1). Deniedness to relations, the dearest.
 - (2). Deniedness to the world. (3). To life.
 - (4). Preparation for death. (5). Spirituality in duty.¹

Many clergymen appeared before the judicatories of the church on charges of what could be generally called a negligent ministry. One charge that was raised against several men was that of infrequency of preaching. The churches had a tradition of mid-week worship and at times this particular service was neglected altogether. On other occasions the service would lack preaching. The chief complaint against Mr. Ferguson, minister of Arbroath, was that he failed to have a week-day service. His excuse seems adequate enough. He claimed that no one attended such a service of worship. At the requirement of presbytery he tried again and had an "auditor".² In Luss in 1690 William Anderson was cited for being remiss "in his ministerial functions in so far as he never gave his parishioners a weekly sermon as was wont to be done by the former minister of the place".³ Mr. Ainslie of Landis carried this aspect of a lax ministry to a greater degree. Before the synod it was minuted:

¹Watson, Memoirs of the Life of the Rev. Thomas Haliburton. Page 203.

²Ray, History of Arbroath. Page 259.

³Murray, The Church of Cardross and its Ministers. Page 79.

his not only neglecting to lecture in publick for two months in the winter season, notwithstanding he preached but once such Lord's day during that time and by his neglecting either to lecture or preach upon week dayes when he did administat the sacrament of baptisme.¹

Mr. Maxwell of Kilmacoll was not lax in his preaching, but he was admonished for looking at his watch "in time of prayer".²

Preaching was not the only thing left undone by such men. Both Anderson and Ainslie had also been charged with failure to catechize and visit families, as was Mr. Couper of Traquair,³ and Mr. Clerk of Garrioch.⁴ Clerk was found

guiltie of supine negligence w^t respect to several parts of the ministerial function, viz. not administering the Lords Supper for two years together w^t not giving any sufficient reason for the neglect thereof, as is evident from the answers of the parochiners at visitation and his own shifting to answer s^{ent} his celebration of the Communion.

Noell Beaton was cited before the Presbytery of Caithness on the same charge of failing to celebrate the sacrament of the Lord's Supper.⁵

In connection with the sacrament others, such as John Skinner of Brechin, were found

guilty of abusing and profaning the sacrament of the Lords supper severall ways besides intrusting his tokens to one under scandall, to distribute among the people, by admitting grossly scandalous persons while under process for their scandals to partake of the said sacrament.⁶

¹ Synod of Angus and Mearns, 20 April 1710. MS.

² Murray, Kilmacoll. Pages 129 - 130.

³ Synod of Lothian and Tweeddale, 5 May 1709. MS.

⁴ Presbytery of Garrioch, 29 February 1702. MS.

⁵ Presbytery of Caithness, 26 July 1699. MS.

⁶ Presbytery of Forfar, 14 September 1709. MS.

Such an attitude toward the discipline of the church was far from unique.

A few ministers seemed to ignore the whole concept of discipline. The people of Maybole complained to the presbytery in 1718 that discipline was not being enforced and as a result, there were numerous instances of drinking, swearing and sabbath breaking going unchecked.¹ Donald Forbes of Kilmuir Easter was guilty of neglecting the discipline "against such as are guilty of the sin of uncleanness."² Mr. Couper of Traquair was found guilty of

administering contradictorie oaths in his sessions by allowing a woman to depone a man guilty of being the father of her child and by allowing the same man to depone he was not the father of yt child ... never gave his servant man a publick rebuke for his publick breach of ye Sabbath ... convened & absolved a scandalous persone by himself wt out a church judicatorie ... admitted to ye Lords table a person who was under process for antenuptial fornication while the scandal was not removed either before the session or congregations after he had denyed the same person the benefits of baptism to his child upon the very foresaid account.³

James Forsyth of St. Ninians was guilty of celebrating an incestuous marriage.⁴ A commission sent North by the Assembly made a charge against Arthur Anderson that he

for filthy Lucre's sake prostitutes the sacrament of baptism to the children of scandalous persons and fugitives from discipline, both

¹ Story, The Church of Scotland, Volume V, Page 479.
² MacInnes, The Evangelical Movement in the Highlands of Scotland, Page 30.
³ Synod of Lothian and Tweeddale, 5 May 1709. MS.
⁴ Register of Assembly, 4 November 1690. MS.

fornicators and adulterers, taking also upon him for the filthy Lucre forced, to marry persons irregularly, not only without proclamation of banns and consent of parents, but also others who are prophane gross and scandalous.¹

Neill Beaton of Caithness confessed to baptizing the children of immoral unions, of marrying couples in adultery, and admitting scandalous persons to church satisfaction without acquainting the presbytery.²

At the time of his appearance Beaton was requested to give up his session register and replied "that he had it not in readiness particularly the last two years". Mr. Clark of Garioch was also found guilty of "keeping no session register, as is plain by his refusing to show the same though earnestly desired to do it, and from the testimony of two of his schoolmasters".³ The Reverend Thomas Harvie of Auchterderran is a good example of a minister both lax and independent in his parish work. He was found guilty on sixteen counts, ranging from tampering with the presbytery records to private baptism.⁴

¹ Beaton, Ecclesiastical History of Caithness. Pages 133 - 134.

² Presbytery of Caithness, 26 July 1699. MS.

³ Presbytery of Garioch, 29 February 1702. MS.

⁴ Synod of Fife, 28 December 1699. MS.

Article third, His slighting and despising family worship, instanced in his expressions anent Mr. Cummings prayers. Andrew Abercrombie David Shadow and James Taylor deposing that Mr. Harvie said, he might have made two bargans and heard enough of Mr. Cummings prayers, they were so long....

Article fourth, Private baptism in his own and neighbouring congregations evident by witnesses and his own confession. ...

Article fifth, Struggling and contending with persons; For proof hereof Andrew Robertson and

Not only the conduct of his ministry, but the whole of a minister's life was scrutinized. He was expected to set an example. Mr. Craig of Dunbartonshire was charged with "omitting family worship".¹ In accordance with the

And Grievs depone that they saw Mr. Harvie and a man gripping at a horse halter together.
Article sixth, Vitiating the presbytrie records proven by two documents the first in the register sixteen nynty two, page one hundred and eighty sex, the second in the register sixteen nynty three page seventh,
Article seventh, ordaining elder without consent of the session proven by Andrew Inglis, Andrew Gibb and David Betson, item giving a testimonial to a scandalous person without the sessions consent, proven by Andrew Gibb and Andrew Inglis maltmen. ...
Article nynty, Incourageing curats in matters of church discipline. Confosseth that he suffered his beddall to summond a faultier sheltering in his paroch to compear before the Session of Markinch.
Articles tenth, Reflecting on Assemblies and other judicatories and particular ministers of this church proven by one instance as to their own presbytry viz. that he said eorne, they first tempt and then accuse. And the second instance is, that he accused Mr. Andrew Wardroper judicially of perjury.
Article eleventh, Taking no conscience of speaking truth and performing promises one instance hereof viz. that Mr. Harvie said in face of the congregation that nothing was objected against the elders, notwithstanding that foure or five went in to his house and objected against them; proven by Andrew Inglis and David Betson, if this Andrew Inglis in his deposition as to that instance, be understood to speak his own words and not the words of Andrew Gibb, Another instance of his not performing promises, adduced, viz. his baptism privately, after engagements to the contrary made to the presbytery. Asserted to be evident from the presbyterie records and his own confession. ...
Article fourteenth, Frowing acts of session and presenting them to the presbytrie as from the session, confest in one instance. ...
Article sixteenth, Trafficking with witnesses proven by witnesses.

¹ Murray, The Church of Cardross and its Ministers. Page 79.

parity between clergy and laity, all the rules regarding the Christian ordering of one's daily life were as rigidly applied to ministers as to others.

The minister, for example, was not immune to the charge of swearing and cursing. Alexander Donno was cited by the Synod of Moray for

swearing by his faith and by his conscience ... for his being given to railing, calling men rascals and using scurrilous expressions such as that he would twyne a harrow out of a man's nose and such like.¹

The Synod of Angus and Mearns summoned Mr. Arbuthnott for calling people by nicknames.² Mr. Lewis Chapman, minister at Alvie,³ and Mr. Buxud of Burntisland were also found guilty of swearing.⁴ Misuse of his tongue was one of the causes for action against Maxwell of Kilscoalm. He was charged with "some ungarded unwatchfull expressions reflecting upon the evil treatment he met with from some person of distinction".⁵ James Losly was deposed by the synod of Sutherland and Caithness for calling his neighbour "a knave and a villan".⁶

Clergymen were involved in some interesting cases of breach of the Sabbath or Fast days. Alexander Donno was also found guilty of "his profaneing the Lords day by

¹Synod of Moray, 19 June 1706. MS.

²Synod of Angus and Mearns, 22 October 1713. MS.

³Synod of Moray, 22 April 1730. MS.

⁴Synod of Fife, 7 September 1715. MS.

⁵Presbytery of Paisley, 30 August 1721. MS.

⁶Synod of Sutherland and Caithness, 8 August 1706. MS.

travelling thirtie miles upon a Sabbath".¹ It was alleged of James Craig of Killoarn

'that he sent upon the Lord's Day two horses to Glasgow to bring home wrappers for his mother's buriall gown.' On another occasion 'he roused Melcolm McGregor out of his bed upon the Sabbath morning to gett up some fallen stocks of corn'. Duly shocked, McGregor pointed out that it was the Lord's Day, but the minister only urged him to it saying 'Haste you, lest the people see you'. ... Another minister to incur censure was Mr. Gillespie of Drymen, who was accused of 'having on the Sabbath Day borrowed or hired three horses and pastured them in his own meadows in order to load his turf on Monday'.²

An additional charge against Mr. Arbuthnott was that he caused his servants to work on the Sabbath and that he himself smoked and frequented the taverns.³ Thomas Keith's admonition came as a result of his performing a marriage on a Fast day.⁴

Drink also numbered its victims among the clergy. Mr. Bugud of Burntisland,⁵ Chapman of Alvie,⁶ Anderson of Caithness,⁷ Campbell of Legerwood,⁸ Boyd of Glenearn,⁹ Clanny of Kirkbeon,¹⁰ and others were disciplined for drunkenness. William Oliphant was charged by the Synod of Angus and Mearns for kissing the church-officer's daughter when he

¹ Synod of Moray, 19 June 1706. MS.

² Murray, The Church of Cardross and its Ministers. Page 81.

³ Synod of Angus and Mearns, 22 October 1713. MS.

⁴ Synod of Sutherland and Caithness, 22 July 1710. MS.

⁵ Synod of Fife, 7 September 1713. MS.

⁶ Synod of Moray, 22 April 1730. MS.

⁷ Deaton, Ecclesiastical History of Caithness. Pages 133 - 134.

⁸ Synod of Mearns and Teviotdale, 20 October 1713. MS.

⁹ Presbytery of Penpont, 18 May 1698. MS.

¹⁰ Synod of Dumfries, 17 December 1696. MS.

was drunk.¹ The charge that "he had used unsuitable words to Mrs. Cob's step-daughter viz. - kins his bretches", brought Andrew Graham's case of drunkenness to the attention of the Assembly's Commission.²

One also comes across other "minor" scandals such as lying,³ fighting,⁴ and slander;⁵ but scandals involving sexual immoralities were dominant among the clergy's errors just as they were with the laity. The Garioch Presbytery cited George Clerk for suspected scandalous carriage.⁶ John Carson of Kydie made the mistake of having a

¹Synod of Angus and Mearns, 16 October 1723. MS.

²Records of Commission of the General Assembly, 13 November 1719. MS.

³Beaton, Eccelesiastical History of Caithness. Pages 133 - 134. In 1700, the Commission sent North by the General Assembly had before it the case of Arthur Anderson, 'pretended preaching deacon'. He is charged, notwithstanding his own defence, of being a person 'of a profane and scandalous conversation, given to habitually drunkenness, lying & fighting.'

⁴MacInnes, The Evangelical Movement in the Highlands of Scotland. Page 31.

Before the Presbytery, Mackenzie, who was 'under no good report among friends or foes', was charged with assaulting one of his parishioners, with being guilty of the sin of shedding 'innocent blood', and with having publicly declared that another of his parishioners 'lied like the devil'.

⁵Synod of Berse and Teviotdale, 10 October 1716. MS. Mr. Homes sentence of deposition for injurious expressions against the presbytery was removed. He was suspended for three months and warned that if he repeated the practice that he would be deposed simpliciter. On the 23rd October 1718, Home was declared a slanderer when not one article in his process against James Ramsay for negligence, drunkenness, etc., was found proven.

⁶Presbytery of Garioch, 2 May 1701. MS.

business transaction with Isobell Edisons, there being a "fama clamorosa of that woman's being infamous".¹ An article of "kissing Jean Fleming, with very indecent circumstances" was lodged against Maxwell of Kilmacola.²

Fornication was not an unknown sin among ministers. Charles Charteris was charged by the Synod of Angus and Mearns,³ and the Reverend Mr. Meinzie by the Synod of Dumfries.⁴ Both were alleged to be guilty with their servants. By far the most prominent process of the period was that involving Thomas Elder the minister at Whithorn. The case came before the Assembly and/or its Commission at least twenty-two times between May of 1710 and May of 1715.

Elder's wife had given birth to a child four months and twenty days after their marriage. He maintained that the child was premature, denied pre-marital intercourse, and offered to purge himself by oath.⁵ The Presbytery of Wigtown pronounced the sentence of lesser excommunication against his wife; but did not want to admit Elder to the oath and sought the Commission's advice.⁶ The Commission voted that they would administer the oath to Elder, and appointed Andrew Fullarton to be their represen-

¹ Synod of Fife, 9 October 1695. MS.

² Presbytery of Paisley, 30 August 1721. MS.

³ Synod of Angus and Mearns, 30 January 1729. MS.

⁴ Synod of Dumfries, 15 October 1696. MS.

⁵ Records of Commission of the General Assembly,

12 May 1710. MS.

⁶ Ibid., 8 November 1710.

tative at the purging at Whithorn.¹ Two months later the Commission received communications from both Fullarton and the Presbytery of Wigtown. Fullarton asked to be excused for not having fulfilled his duty having been prevented because of storms. The presbytery asked the Commission to take a more serious view of the case.² The next day the Commission decided to refer the case to the Assembly.³

At its session on the 14th of May 1711 the General Assembly began to hear evidence on the matter. A petition was received from the synod, presbytery and Kirk-session opposing the administration of the oath. Another was received from some of the heritors and many of the parishioners of Whithorn desiring that Elder be granted the oath. After hearing the evidence and former proceedings in the matter, the Assembly voted by a great plurality not to admit Thomas Elder to the oath on the ground that the presumptions of guilt were so great that an oath would not remove the scandal.⁴

On the 17th of May, writing from the Assembly to his wife, Wodrow observed the following.

I hear the committee anent Mr. Elder have agreed that no further censure be gone into, but the suspension continued, and the parish supplied, till next Assembly; when Providence may perhaps

¹Records of Commission of the General Assembly,
10 November 1710. MS.

²Ibid., 3 January 1711.

³Ibid., 4 January 1711.

⁴Registers of Acts of the General Assembly,
14 May 1711. MS.

clear the way. They would have dissolved the relation, but it's said it cannot, or, at least, was never done without a minister's consent. And the presumptions will not infer a deposition.¹

In reality when the Assembly met on May 18th, the commissioners were first given a choice of delaying the process, thereby continuing the suspension, or proceeding. They voted to proceed and on the following vote deposed Mr. Elder. The facts that his wife had formerly been guilty of fornication and that the brethren of the presbytery had advised against his marriage, the fact that he invited a minister to marry him before the bans were thrice proclaimed, the fact that he went outside the presbytery for a clergyman when neighbouring ministers refused to marry him, the fact that he made an attempt to take his pregnant wife to Ireland, and the fact that he owned the child, obviously born of a full term pregnancy, to be his; weighed heavily on the minds of the commissioners.²

Wodrow writes that the vote carried by eight with many not voting. Of Thomas Elder he had the following to say.

When the sentence was intimated, he said he prayed God might forgive this Assembly for passing such a sentence on an innocent man, who had confessed nothing, and had nothing proven against him, and he wished that some remarkable judgment might not come upon the Assembly for this sentence. Thus he blustered till his last, which was very unsatisfying.³

¹McCrie, The Wodrow Correspondence, Volume I., Page 226.

²Registers of Acts of the General Assembly, 18 May 1711. MS.

³McCrie, Op.Cit., page 229.

In November Elder petitioned the Commission to remove the deposition. He was told that he must first remove the scandal, to which he replied that he could only do that by oath.¹ Eighteen months later he requested to be admitted to the sealing ordinances. He brought statements verifying his good behaviour from a synod and kirk-session in Ireland where he had lived since the Assembly had passed sentence on him.² The Presbytery of Wigtown testified that Elder still professed himself to be innocent of the scandal but admitted to his good behaviour and his sorrow. The Commission then voted in favour of admitting Elder to the sealing ordinances.³

Two years later, on the 13th of May 1715, Thomas Elder returned again from Ireland with more references as to his good conduct and asked the Assembly to re-instate him as a minister. The case was reviewed and various persons, including some brethren from Wigtown Presbytery, gave him good character references. After deliberation the General Assembly took off the sentence of deposition and re-instated him to the office and exercise of the ministry.⁴ It should be noted that at no time did the Reverend Thomas

¹Records of Commission of the General Assembly,

2 November 1711. MS.

²Ibid., 12 May 1713.

³Ibid., 13 May 1713.

⁴Registers of Acts of the General Assembly, 13 May 1715. MS.

Elder confess himself to be guilty of fornication, nor at any time did he satisfy discipline either publicly or privately for the supposed scandal.

Among these ministers cited for adultery were: James Balfour of Eccles,¹ Hugh Clanny of Kirkbean,² Henry Robine of Brunt Island,³ and James Jameson of Perthshire.⁴

In addition to sexual immoralities, other miscarriages which could cause scandal to a married minister were examined. One of the charges by the Synod of Lothian and Tweeddale against Mr. Couper the minister of Traquair, was

that there has been continual strife and contentions in Mr. Couper's family but especially betwixt him and his wife it is unseemly in any families but especially betwixt a minister and his wife who ought to be exemplary unto others every way.⁵

John Gilchrist was cited by the Presbytery of Inverary for "some irregularities in his family, particularly maltreating and beating his wife, whereof there was information from credible persons".⁶

The case of Mr. John Mulligan, minister of Methlick, illustrates the method of libel and answers used in such processes.

asked 'whether or not he did abuse his wife's credit and character in company, he replied by owning that he believed he had complained of her temper, and that he knew she had reproached herself in several places. Whether or not he alledged it

¹Morrison, Memoirs of Thomas Boston, Page 14.

²Synod of Dumfries, 17 December 1696. MS.

³Records of Commission of the General Assembly, 14 August 1718. MS.

⁴Presbytery of Perth, 23 October 1710. MS.

⁵Synod of Lothian and Tweeddale, 3 May 1709. MS.

⁶Presbytery of Inverary, 4 April 1722. MS.

was no wonder she did not agree with him, since she would not agree with her brother when with him, but would sometimes cast the keys in his face ... he has heard these things reported of her, and told them as much. Whether he had threatened that he would putt his foot on her neck and trample her under his feet ... he owned that she coming one day from the hall door toward his chamber door in which he stood, with her hand lifted up he told her if she offered to lift a hand to him he would sett his foot on her neck and trample her. 4th Whether or not he will not give her money to buy eggs, fish or other provisions for his house, or give it only to the sellers or his servants, and will not trust his wife with it, and causes people come twice or thrice before they gett what his wife has pectioned with them for.' He divides his answer into five heads, like a sermon, 'she has full liberty to buy what she pleaseth. In buying provisions for his family she never asks his leave or consent by acquainting him before it is bought. He pays all things bought for his family, and his wife will not come to him to seek the money or acquaint him with the price, but sends always her servants, man or woman, and sometimes the persons from whom she buys. It was the custom of his former wife to come and ask money for what is needfull for her family. He did give allowance for his family and yet was still complained of. 5th Whether or not he so much neglects his wife as not to give her money for the common charity, and gloves for her hands, and common occurrences. He answered that he allows her own and women's vertue to keep her pocket' (sic - probably their household industry such as spinning or weaving is meant); for buying anything needfull for her body he pays what she keep the against his knowledge. 6th Whether or not he frequently discourages people from coming to sell necessaries to his wife, by discharging them when he finds them by the way with butter or fish or such like, and abusing them when they come, saying, how durst you come how dare you sell to her, meaning his wife - as particularly, Thomas Gibb's wife in Melkie Methlick, and Robert Birnie's in Colliery, whom he is said to have called Slutt, and threatened to cause his Officer scourge her out of the Gless, and abuses his wife before them, saying how durst she

buy from you, so that some of them would never come again. He answered. He never discharged any from coming with what he thought necessary to his house, but once he ordered a eadger to goe by; for he cared not for his fish, and that he did once quarrell another for selling fish to his wife, because he did not love them, but that yet they were bought for the house; and as to Thomas Gibb's wife, he never quarrelled her for coming with butter, but hearing his wife speak of his former wife before her, intreated her she would hold her peace, but gave no opprobrious languages, but when the said Thomas Gibb's wife was come into his own room, he did tell her that his present wife had once threatened to throw the plates into his face if he spoke one word more; and as to Robert Birnie his wife, he said that she having come in and gotten ten marks about the middle of June, on a Saturday, for butter which she payed not till about six weeks after at which time meeting her on the way, he asked where she was going; she answered with butter to his wife which was already paid, on which he did indeed tell her she was an unworthy woman, and that it was unhand-somely done, and that he would cause his officer put her out of the Class.¹

The discipline of the ministers in the above examples was governed by the rules found in chapter seven of the Form of Process. All scandals committed by ministers were to be processed initially before the presbytery. Offences were to be considered of greater offence when a minister was involved and for that reason information received in such a case was to be carefully considered. If the presbytery felt that there were grounds for a process, then the minister accused was to receive a copy of the libel and a list of witnesses. Upon his citation, the libel having been read,

¹ Mair, Records of the Presbytery of Ellon. Pages 353 - 355.

the clergyman was able to read his answers. If he confessed and the offence was one that was censurable among the laity, then he was deposed, and required to undergo a public repentance. If the minister fled or refused to answer the summons, he was regarded as guilty, deposed, and sentenced with the lesser excommunication. If he continued contumacious, the greater excommunication was passed against him. On the other hand if the man appeared when summoned, he was permitted to cross-examine witnesses. If the matter with which he was charged had to do with the conduct of his ministry, he was to be admonished by the brethren to correct his ways. In such an event the presbytery were first to visit his parish and ascertain the facts. Before a deposed minister could be re-instated he had to give evidences of his penitence and good character.

Probationers were also subject to careful observation by the judicatories. In 1693 a probationer of Ayr Presbytery was cited for "drinking and learning others to drink healths".¹ Patrick Purdie's drinking had led to his "swearing & beating his wife". The presbytery admonished him, repealed his license, and ordered him to appear before the congregations of Gladsmair and Saltpreston.² Andrew Dickson of Aberlady was suspended for an irregular marriage. He had married while his wife was under dis-

¹ Edgar, Old Church Life in Scotland. Page 244.

² Presbytery of Haddington, 6 July 1699. MS.

cipline and had concealed the fact of marriage.¹ John Boner of Sterling was also cited for an irregular marriage.² At least one probationer fell into adultery. On the 26th of November 1701 the Presbytery of Edinburgh rebuked Alexander Aule and repealed his license.³

While elders had the authority to discipline the people of the parish, they were subject to the same rules themselves. As in the case of the clergy, elders, too, were expected to maintain a high standard of Christian life. The Assembly's Commission received an overture in 1723, the purpose of which was to maintain the "purity of kirk-sessions". Before a candidate was to be admitted to the eldership, proof was to be given of his pioueness. Kirk-sessions were to meet both for exercises which would increase personal godliness and for privy censures.⁴

In compliance with the synod's appointment the ministers of Ayr met in 1723 "to draw up a formula of questions to be put to members of session".⁵ As a result of such sessions, William Allason was deposed as an elder of Mearns for being "deficient"⁶ and the two elders of Stewarton were

¹Records of Commission of the General Assembly, 16 May 1717. MS.

²Registers of Acts of the General Assembly, 26 May 1724. MS.

³Presbytery of Edinburgh, 26 November 1701. MS.

⁴Records of Commission of the General Assembly, 11 March 1723. MS.

⁵Story, The Church of Scotland, Volume 1. Page 491.

⁶Mearns, 7 August 1698. MS.

rebuked for not being at the kirk to collect the offering.¹ Messers James Wat, Hugh Bankhead and William Bankhead of Kilmours were rebuked for frivolously withdrawing as elders.²

One of the main duties of the elder was to call the people to task for the breach of the Sabbath. As could be expected, in this as in every other area of life elders, too, were vulnerable. John Gray received a private rebuke from Carstairs Kirk-session for bringing in his barley on Sunday.³ When Adam Scot, elder at Auchtermuchty, offered to sell a cow on the Sabbath, he ensured his suspension from the kirk-session.⁴ William McKinnie of Glasserton was rebuked for not hindering his son from carrying straw to market on a Fast day.⁵ Duncan Stuart of Leochel-Cushnie⁶ and John Macdonald of Ringussie earned their rebukes by drinking on the Lord's day.⁷ It is interesting to note the following minute of 29 April 1728, as it appears in the South Leith records.

It being represented that the elders seat in the church is very ill frequented by the members of Session, many of them sitting in their own respective seats in severall places of the Church, And the Session judging it decent and a piece of good order that this should be amended, and considering former Acts of Session relative

¹McCrrie, The Wedder Correspoondence, Volume I. Page 360.

²Kilmours, 18 October 1710. MS.

³Carstairs, 16 November 1699. MS.

⁴Auchtermuchty, 26 December 1706. MS.

⁵Glasserton, 4 March 1711. MS.

⁶Leochel-Cushnie, 19 May 1723. MS.

⁷Macpherson, Glimpses of Church and Social Life in the Highlands in Olden Times. Pages 29 - 30.

thereto, Therefore did and hereby do unanimously enact and appoint for the future that the elders and deacons shall meet on Sabbath days in the Session House at the ringing of the last bell forenoon and afternoon, and from thence when publick worship begins shall repair in a body (at least as many as the seat will conveniently hold) into the sd seat, And that under the pain and penalty of two Shillings Scots for each diets absence unless they have a sufficient excuse, And appoints this Act to be read in Session three successive diets after this, that all members of Session may be acquainted therewith and none may be pretend ignorance.¹

Elders also succumbed to the superstitious practices of charming. John Reid was deposed by the Presbytery of Cupar for tying his son to a stone all night in an effort to rid him of a "distraction".² Nor were they immune to the sins of the tongue, such as slander, perjury and cursing. William Miles, an elder in the parish of Killmenie, received a presbyterial rebuke for slandering Andrew Shepherd, a fellow elder, as a "liar and rascal".³ John Johnston was suspended from sealing ordinances and rebuked by the Synod of Dumfries for spreading the slander "that he saw Mr. Taylor (the minister) in bed with his sister".⁴ Thomas Anderson was suspended from the exercise of his office, as an elder of Auchterderran, for his slandering.⁵

When the Presbytery of Perth was investigating the ministry of William English of Kilsindy, they questioned two

¹ Robertson and Swan, South Leith Records, Page 49.

² Presbytery of Cupar, 24 October 1710. MS.

³ Ibid., 27 December 1720.

⁴ Synod of Dumfries, 10 October 1711. MS.

⁵ Presbytery of Kirkcaldy, 12 August 1708. MS.

of his elders about the "petition containing an ample testimonial in Mr. William English their minister's favour insert in their session book". The elders replied that the kirk-session unanimously endorsed the petition. When it was found that the elders in question were not even present the day the session had the matter before them, the presbytery deposed them as elders for perjury and placed them under the sentence of lesser excommunication.¹ Alexander McClingen was suspended as an elder of Penninghame Parish Church for using "very unchristian expressions" against his neighbour.²

James Finnie probably had his tongue loosened by drink. He was cited for the "sin of cursing swearing drunkenness and endeavouring to pull a woman off her horse, saying it was his horse when it was not". The presbytery judged that he deserved to be deposed as an elder of Corstorphine for his action; but noting his evident repentance they merely continued his suspension until he gave proof of his Christian deportment.³ Drinking often led to this kind of physical violence. Four elders of Carriden were suspended for three months when their drinking led to a brawl between themselves.⁴ Auchtermuchty Kirk-session rebuked Henry Hollock and suspended him as an elder for drunkenness and fighting.⁵

¹ Presbytery of Perth, 12 December 1717. MS.

² Paton, Penninghame Parish Records, Volume I. Pages 346 - 347.

³ Presbytery of Edinburgh, 10 October 1705. MS.

⁴ Carriden, 14 June 1692. MS.

⁵ Auchtermuchty, 23 March 1702. MS.

However, it was in the realms of sexual immorality that most of the elders' offences were committed. On the 14th of September 1704 Kirkcaldy Presbytery deposed Henry Archibald for scandalous carriage.¹ Robert Notman of Manor,² William Reid of Dron,³ and John Young of Dunkeld were all deposed for fornication.⁴ John McWean of Stranraer,⁵ John Thomas of Kirkcaldy,⁶ and Archibald McLashlane of Inverary were all deposed for adultery.⁷ There was one case of incest in the records examined, involving John Hutton of Perthshire. He, too, was deposed from the office of elder,⁸ as were George Drummond of Edinburgh,⁹ and Richard Jamieson of Glenholm for their irregular marriages.¹⁰

The church-officer and the clerk (who usually served as precentor and schoolmaster also) were equally subject to the discipline of the church. The church-officer of Forfar was cited "for not joining the praise of God", and for keeping "silent, among the rest that were disaffected so that the minister was left alone in this work". He was

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- ¹Presbytery of Kirkcaldy, 14 September 1704. MS.
²Manor, 7 March 1697. MS.
³Dron, 1 February 1730. MS.
⁴Presbytery of Dunkeld, 26 March 1717. MS.
⁵Presbytery of Stranraer, 4 February 1708. MS.
⁶Presbytery of Kirkcaldy, 13 January 1702. MS.
⁷Presbytery of Inverary, 25 July 1697. MS.
⁸Presbytery of Perth, 30 January 1706. MS.
⁹Synod of Lothian and Tweeddale, 7 November 1721. MS.
¹⁰Presbytery of Biggarr, 16 April 1724. MS.

given a private rebuke and allowed to continue his position because of his "seeming sorrow".¹ When James Bell of Corbie was deprived of his office by the kirk-session for his scandalous carriage, he retaliated by "detaining the key of the kirk". The presbytery asked the magistrates to jail him "till he be made sensible and give satisfaction".²

The churchmen were not immune to chorming. Mr. Russell of Auchtermuir was suspended as precentor, session clerk and schoolmaster for writing the Lord's prayer backwards in return for two weeks payment.³ Nor were they immune to Sabbath breaking. Robert Low of Dysart was suspended for his "profanation of the Sabbath by playing on a corn pip & shaving himself".⁴ However, it was by the scandal of drunkenness that most men came to grief. In 1707 Alexander Scott, church-officer, received his first warning for his drunkenness from the West Calder Kirk-session. In 1712 he was cited on the same charge and received a sessional rebuke. In 1714 he was cited a third time and three months later demitted his office. The session had been embarrassed by some "scurrilous verses" which detailed their officer's exploits and were circulating about.⁵ Andrew McGill was suspended by Aberlady Session

¹ Reid, The Royal Burgh of Forfar. Page 141.

² Presbytery of Wigtown, 21 November 1704. MS.

³ Presbytery of Kirkcaldy, 8 May 1707. MS.

⁴ Ibid., 7 April 1696.

⁵ West Calder, 7 December 1707 - 27 March 1715. MS.

for his drunkenness,¹ as was James Henderson, schoolmaster of Fintray,² and Andrew Kirkwood of Salton.³

As usual, drinking often led to other scandals. Peter Henderson of Monifieth was discharged as church-officer for "excessive drunkenness, fighting and swearing".⁴ Monifieth Session had previously been unlucky in their choice of beadle. In 1715 they had to discharge John Marshal for "stealing" and a "debuch'd life and conversation".⁵ Andrew Barron the church-officer of Alyth was summoned to the presbytery. The charge was that he had

publickly miscarried by drinking, unchristian railing and threatening his neighbour upon the Tuesday after the giving of the Sacrament of the Lord's Supper, and having thereupon call'd before the session, did prove contumacious, wherefore was suspended by them from officiating as Church officer, that thereafter he compared and in one upbraiding and reproachfull way express'd himself before them.⁶

Mr. Duncan was deposed as session clerk, precentor and schoolmaster of Bouity "for his scandalous conversation in being several times drunk & guilty of some extravagancys on in his cups".⁷

Men do not have to be drunk to misuse their tongues. Mr. Burt, the schoolmaster, of Insh was appointed "to appear before the congregations in sackcloth upon the publick place

¹Aberlady, 25 August 1706. MS.

²Fintray, 15 May 1729. MS.

³Presbytery of Haddington, 24 October 1700. MS.

⁴Monifieth, 15 November 1724. MS.

⁵Ibid., 29 May 1715.

⁶Moikle, The History of Alyth Parish Church. Page 156.

⁷Presbytery of Carleoch, 22 November 1710. MS.

of repentance and be rebuked". His appearances for his "blasphemous speeches (though his Savior should come down and plead for him he should break him)" were to continue "so long as shall be judged for edifications and needfull for removeing the scandall".¹ William Reid of Barry was dismissed as clerk and precentor for saying "divell ryd upon hir back".² Sometimes a tongue was turned against the employers. Patrick Christy, schoolmaster in Grinlaw, was rebuked for slandering the minister.³ William Thomsone, headle at Kennoway, was publicly rebuked for slandering the session. He said they "medled wt affeairs yet did not belong to ym".⁴

Sexual misconduct was among the scandals committed by the "churchmen". Claud Alexander of Wemyss,⁵ and a Mr. Dicksons of Glamis were discharged from their jobs as clerk, precentor and schoolmaster because of their unbecoming carriage.⁶ The Presbytery of Paisley had two such cases in a period of a little over two years. On February the 18th, 1702, they dismissed John Fergusone as schoolmaster and barred him from sealing ordinances for his scandalous behaviour.⁷ On the 12th of April 1704 Hugh Bishope

¹Presbytery of Carloch, 22 November 1710. MS.

²Barry, 6 July 1720. MS.

³Presbytery of Duns, 22 April 1703. MS.

⁴Presbytery of Kirkcaldy, 22 June 1699. MS.

⁵Wemyss, 10 August 1699. MS.

⁶Glamis, 3 March 1721. MS.

⁷Presbytery of Paisley, 15 August 1705. MS.

was suspended as schoolmaster and session clerk for his antenuptial fornication.¹

Various types of offences were committed by church officials, as with other men. Of interest are the cases of Adam Rodman who received a sessional rebuke and was discharged as church-officer for re-selling stolen goods,² and that of the schoolmaster of Inchinnan, John Blackwood, who "had made a long and constant practise of exacting more of persons to be married and those that had their children to be baptized, and otherways, than what was ordinar & due".³ Wedrow, writing to his wife in 1711, told her of a "warm debate about the kirk-treasurer of Edinburgh". It was said in the sub-committee for instructions that "they keep whores in pension to discover persons, and without process, fine people of all ranks, and sometimes get 3,000 marks from one person, and in their accounts give up but 300".⁴

Although the ministers and elders had the power to discipline the members of the kirk, they, too, were subject to the same strict ecclesiastical discipline. In addition to the examination of their daily lives the church officials were examined as to the execution of their duties and were

¹Presbytery of Paisley, 12 April 1704. MS.

²Kilmours, 20 August 1708. MS.

³Presbytery of Paisley, 15 August 1705. MS.

⁴McCrie, The Wedrow Correspondence, Volume 1. Page 220

deposed if found to be wanting.

In the last chapter we will discuss the questions of the frequency and justness of church censures.

CONCLUSION

If one does not keep track of the dates when reading through the minutes of the judicatories, one gets the impression that the courts were overwhelmed by the number of scandals which came under their cognizance. As a matter of fact, considering the vast scope over which they had responsibility, there were but few cases. In the fifty kirk-session manuscripts examined, 2379 cases were decided. But when one takes into consideration the fact that the total number of years represented amounts to 1117, it is obvious that on an average the kirk-sessions dispensed discipline in slightly over two cases per year. Even the presbytery's average did not reach three per year. There were 1692 cases disciplined in a total of six hundred sixty-five years among the twenty-five presbyteries whose records were examined. The reason one gets the impression at first glance that the judicatories were over-burdened with scandals is due to the fact that offenders were made to appear on several occasions before being absolved. And so while a court might have had several cases pending before it, perhaps some were new.

Among the presbyteries Edinburgh carried the heaviest

burden, settling one hundred seventy-one cases in ten years. Aberdeen, Gaithness, Inverkeithing, and Perth Presbyteries were next in line and handled but slightly over four cases per year. Forfar, Arbroath, Glenrothes, Lurg, and Jedburgh Presbyteries disciplined between one and two cases each year; and Biggar Presbytery decided only twenty cases in a thirty-six year period. The Kirk-sessions settled even fewer processes per year. Dalston, Cleish, Ordiquhill, Longformacus, and Wilton Kirk-sessions averaged less than one case per year. Gladsmair averaged between six and seven processes each year and Wemyss and Canisbay between seven and eight per year. Carriden handled the most cases, disciplining one hundred five cases in ten years.

There were many instances in which judicatories did not settle any processes in a particular year. There were a total of two hundred seventy-five such years among the Kirk-session manuscripts examined and eighty such years among the presbyteries studied. The Longformacus Kirk-session between 1690 and 1711 decided on cases in only four of the twenty-two years and the Session of Cleish decided on only nineteen cases in the thirty years between 1701 and 1730. A period of seventeen consecutive years went by in which Wilton Kirk-session did not settle a single process. The Presbytery of Biggar discharged discipline in only nineteen years between 1694 and 1730.

In the years when processes were being decided, it is not

difficult to come across cases which show that the method of discipline could be reasonable, just, fairminded and lenient as well as strict.

The registers of the various judicatories contain a number of processes in which the defendant was dismissed because the facts proved him to be innocent or because there were no facts at all. The case of Lewis Chapman, minister at Alvie, reached the General Assembly. Although he was a member of the Presbytery of Abernethy, a process had been raised against him before the Elgin Presbytery. Fearing the uncertainty as to when they might absolve him, he petitioned the Assembly to decide the case. The General Assembly

did unanimously find the libel brought against Mr. Chapman not proven, and therefore they took off the forsaide sentence of the synod, and did declare the same to be void and null and did absolve him from this whole process, and farther the Assembly did declare that they are highly dissatisfied with the proceedings of the Synod of Murray, and Presbytery of Elgin, in this matter, and they do appoint this sentence to be intimated from the pulpits of Elgin and Alvie.¹

The Commission of Assembly found the charges against Andrew Ker not proven. He had been cited on three counts: 1. Offering to commit the sin of adultery, 2. Being drunk, and 3. Being friendly with the enemies of the government. Ker produced witnesses that said he had been drinking a little

¹Registers of Acts of the General Assembly, 23 May 1730. MS.

ale but was not drunk. He denied the first charge and the servant girl who came into the room said that she suspected nothing to be amiss. He further stated that there were bad feelings between his wife and his suspected accomplice.¹

The Presbytery of Kirkcaldy found in the case of Hendrie Burt that "as to the article of drunkenness upon him" that there was "nothing legally proven by any of the witnesses but on the contrair, seall witnesses adduced agt him by ye depositions cleared yt part of the lybie".² The Presbytery of Edinburgh released Simon Guthrie from a charge of rape when no proof could be found.³ Archibald Angus was freed of a charge of fornication by Dunfermline Presbytery. He was accused by a woman with a poor reputation, and there were not any witnesses or facts to prove guilt.⁴ Marjorie Campbell was declared innocent of adultery when the Presbytery of Inverary decided that it was all just a rumour and that there was no proof of a scandal.⁵ Although Perth Presbytery found Captain Nairn guilty of scandalous carriage and drunkenness, they freed him from the charge of adultery and rape when they found there was no proof of such an offence.⁶

Carriiden Session dismissed George Tilloch, having no

¹Records of Commission of the General Assembly,
11 March 1720. MS.

²Presbytery of Kirkcaldy, 24 July 1695. MS.

³Presbytery of Edinburgh, 4 February 1702. MS.

⁴Presbytery of Dunfermline, 18 August 1706. MS.

⁵Presbytery of Inverary, 30 June 1698. MS.

⁶Presbytery of Perth, 15 February 1710. MS.

ground for prosecuting him for the suspected attempt to strike his grandfather.¹ When it was proved by witnesses that the charge of fornication against Christie Couls was a slander, the Kirk-session of Leochel-Cushnie ordered that her innocence be publicly intimated.² At the presbytery's recommendation that no scandal was proven, Strichen Session dropped the process against Margaret Low and James Binn who had slept together in one room in her public house.³ Janet Pitinburg was cleared of a charge of charming when the Kirk-session of Bron "could make nothing out against her".⁴ James Creige of Cores,⁵ and John Smith and James Hood of Stracathro were declared innocent of premarital fornication, the babies being declared premature.⁶

Those who were ill or who were caring for the ill, at times received special consideration. Rachel Cameron was excused by the Edinburgh Presbytery from publicly appearing for adultery because she was a cripple.⁷ When the Kirk-session of Elgin called John Hay's wife

the said John complained and intreated his wife might be excused because she was waiting upon her sister who was lying sick at the time and told that water that she was carrying upon the Sabbath day was for her sister to drink whereupon she was excused and no further to be troubled upon this account.⁸

¹ Carriden, 23 January 1700. MS.

² Leochel-Cushnie, 30 March 1712. MS.

³ Strichen, 23 February 1711. MS.

⁴ Bron, 8 May 1694. MS.

⁵ Cores, 2 September 1694. MS.

⁶ Stracathro, 27 March 1720 - 4 March 1722. MS.

⁷ Presbytery of Edinburgh, 13 September 1704. MS.

⁸ Oramond, Records of the Kirk Session of Elgin. Page 320.

In June 1708 it was reported 'yt on sabbath was a fourth night Mart Oliver in Alyth was found gathering Kail in time of divine worship'. The minister had made inquiry and she had confessed, 'yet it was only yt she might make a bath yr for the use of her dying child'. The session sent her an 'exhortation to walk circumspectly'.¹

A Forfar man who was found drinking ale on the Sabbath "was pardoned because being lame he waited in the inn for a horse to take him and his wife home, she being at sermon".² Robert McKea who was guilty of a relapse in pre-marital fornication was dismissed by the Session of Kelton after only two appearances as he was subject to fits.³ Banchory-Ternan Kirk-session did not require any appearances of Alexander Burnet who was guilty of incest with his aunt, but "looked upon him as a mad man & not an object of kirk censure left him under the scandal".⁴

There were others who received somewhat preferential treatment. Glasserton Kirk-session dealt justly with the poor.⁵ Martha Beattie's penalty for fornication was but half-a-crown because of her poverty.⁶ The same session also imposed the following fines for fornication:

¹Moikle, The History of Alyth Parish Church. Page 153.

²Moide, The Royal Burgh of Forfar. Page 141.

³Kelton, 29 March 1719. MS.

⁴Banchory-Ternan, 17 October 1725. MS.

⁵This in apparent contrast to the practice of some sessions. Macky, A Journey Through Scotland. Page 220.

CHURCH-Censures are said to be very severe here; but I perceiv'd the Poor only suffer'd by them; For a piece of Money will save a Man here from the Stool of Repentance, as such as in England.

⁶Glasserton, 27 November 1700. MS.

Margaret Credie, nothing, because she was a "beggar"; David Cluir, forty pence, because he was a "poor man".¹ The Session of Carstairs also followed this lenient practice.² James Walker, Revine Stephen, and Janet White guilty of fornication; and Janet Young guilty of a re-lapse in fornication paid no penalty as they were all poor.³ A Foveran adulteress was not fined for the same reason.⁴ And among the records of Stonehouse we find the following minute.

Thomas Robertson, Kirk treasurer, declared that he had got a sentence against some who had not paid their fines for their fornication; but the session, in regard of their extreme poverty, delayed to exact anything for the time.⁵

The young also received some sympathy. Gladsmuir Kirk-session gave Agnes Wright a limited sentence for her breach of Sabbath as she was "not of age".⁶ And when John Berriit and William Gibb got into a fight on the Sabbath, they received but a private rebuke from Newtyle Kirk-session as they were young and it was their first offence.⁷

There are other occasions when the actions of the judicatories, from kirk-sessions to the General Assembly, are

¹Glasserton, 27 November 1700. MS.

²Here, perhaps, we could note another action towards the poor which was common among all sessions. This case from Inverness will serve as an example.

Mitchell, Inverness Kirk Session Records. Page 70.

The Magistrates having fined two persons for cursing twentie Shill. Scots, it was ordered to be given to Mungo Campbell, a poor, blind suppliant.

³Carstairs, 12 April 1702 - 24 May 1702. MS.

⁴Foveran, 27 May 1705. MS.

⁵Naismith, Stonehouse. Page 132.

⁶Gladsmuir, 13 March 1698. MS.

⁷Newtyle, 16 September 1722. MS.

best described as lenient. The Session of Currie dropped the case against Mary Greg who was reported to have said that she would poison the minister's well.¹ Wemyss Kirk-session passed Alexander Baxter with a warning that the next time he would receive both ecclesiastical and civil censures. He had slandered one of the elders as the "murderer of his father". And when some members of that congregation broke a fast day, "the session thought fitt to pass the breach of the sd day in oblivion". In the midst of a debate before the Synod of Ross "John Eaine with a high voice and in a great heat called the said Mr. Daniel McKiligin a lyar, a damned lyar and a damned rascall". No evidence appears in the manuscripts of his being disciplined.³ Dron Session were anxious to absolve Alexander Paton of adultery as the scandal was not well known.⁴ When an Alyth woman failed to answer a citation

the session considering that she lives in the outmost corner of the parish and that it would be a piece of cruelty to oblige her to attend the session in the mids of the winter, delayed to cause cite her until Candlemas next.⁵

When the case of George McIntosh came before the Session of Inverness

There was a Letter sent by him to the Modr. owning his guilt, and intreating he should be delayed for a time because if it came to his

¹Currie, 15 April 1694. MS.

²Wemyss, 6 July 1692 - 27 January 1693. MS.

³Synod of Ross, 28 May 1707. MS.

⁴Dron, 10 February 1730. MS.

⁵Meikle, The History of Alyth Parish Church. Page 132.

Grandmother's Mars, it would prove hurtful to him, because that by her he had his living at the time, which being Considered by the Session, they granted the delay.¹

A homely decision which reveals the personal touch is mentioned in Dr. Bentinck's Dornoch, where the Session dismissed a charge, "they being in perfect knowledge that the said John is a well-natured poor man, and if he was provoked to strike her, it was entirely owing to herself."²

Fonwick Kirk-session found that a scandal of swearing was "not very flagrant" and the accused "being of a stiffe, proud humour, unanimously resolved that he shall onlie be rebuked before the session".³

The Presbytery of Edinburgh showed leniency in two adultery cases which came before them. In 1701 George Broom confessed that he had been guilty with Nicolas Shand.

And he having represented that the circumstance of his family & affairs are such, as that he cannot for some tyme enter on his appearance in the place of publick repentance; the presbytery granted a delay thereof.

And in 1706 they dismissed Janet Grey after only two appearances as they found her to be deeply penitent.⁴ The problem which confronted Caithness Presbytery was that the manager of the fishery on the water of Dumbearth was sending the boats to sea on the Sabbath. The manager and his crew were cited by the Session of Lathoron, whereupon Captain Taverner said "he was not convinced of the unlawfulness of

¹ Mitchell, Inverness Kirk Session Records. Page 184.

² Henderson, The Scottish Ruling Elder. Page 107.

³ Story, The Church of Scotland. Volume V. Page 493.

⁴ Presbytery of Edinburgh, 25 June 1701 & 20 March 1706. MS.

what he had done". The presbytery appointed a committee

to converse wt Captain Taverner manager of the fishery at Dunbeath, because he's a stranger, on Moonday next, and to use friendly methods wt him to bring him from this scandalous practice: before they should proceed to censure.¹

Robert Benzie who was accused before the Presbytery of Garioch for charming explained that, although what had taken place at his home might look like charming, it was simply a coincidence. His explanation was accepted and he was told to apologize to the congregation of Gyn for any offence he might have given.²

The Synod of Lothian and Tweeddale heard a report as to

¹Presbytery of Caithness, 14 June 1710. MS.

²Presbytery of Garioch, 18 August 1703. MS.

Robert Benzie one of ye elders had been guilty of some things, about ye tyme of his flitting at whit Sunday last, qch look like charming and as if he yrby design'd ill to his successor Wm. Elsing, such as ye hanging a dog in ye house, extinguishing ye fire wt piss, taking out ye crook at ye lumb and burying a cat under ye hearth ... he having been once again examined before ye session denyd all sove yt he alleadged he was oblidged to take his crook out at ye rigging of ye house, and he knew not but his wife might have cast water on ye fire out of a stoup qch used to hold piss ... pretending also that what he had done was in ye simplicity of his heart and yrby he designed no ill to any person, ye modr required if he had not heard yt ye taking out ye crook and extinguishing ye fire after such manner were things practiced by charmers and such as wishd ill to yr successors, he denyd yt he heard ye same. Being enquired if Wm Elsing his successors, had not desir'd him to leave coals to kindle the fire, confessed he did, but he alleadged ye fire was scarce and yr was hardly so much as he was oblidged to carry to ye town he was going to for kindling his fyre there.

the "intemperance and levity" of John Lafevre, presumably a French Protestant refugee. The synod rebuked him and decided that "in regard he is a stranger and suffering for the truth & the synod being informed that he hath a good gift of preaching, that therofor the former prohibition to preach be taken off".¹ When the Assembly's Commission was asked to decide between the Presbyteries of Caithness and Kirkwall as to who had disciplinary jurisdiction over pastors who used the ferries to get around their parishes on Sunday, the Commission recommended that all such disciplinary action should be dispensed with.² A question dealing with a similar breach of discipline reached the General Assembly in 1722.³ William Miln, minister at Kildrummie, was deposed by the Presbytery of Alford and the Synod of Aberdeen for traveling on the Sabbath. Petitions were received from some gentlemen "attesting the necessity of the said Mr. Miln his travelling upon the Sabbath", and from "the parishoners of the said Parish of Kildrummie in favours of the sd Mr. Miln their minister". The Assembly, after prayer, repealed the sentence of deposition and "did also signify to the commissioners from the foresaid synod that the Assembly could not approve of the conduct of their synod in this affair either as to the matter or form thereof".

¹ Synod of Lothian and Tweeddale, 5 November 1702. MS.

² Records of Commission of the General Assembly,

11 March 1725. MS.

³ Registers of Acts of the General Assembly,

14 May 1722. MS.

It is not difficult to conclude that though the discipline of the church may generally have been unsympathetic, there were numerous occasions, easily discovered and documented, which present quite a different and more humane viewpoint.

The discipline in the Church of Scotland, 1690 to 1730, presents an interesting study. Through the Westminster Confession of Faith the church had willingly obligated itself to a literal interpretation of the Scriptural laws and commands governing Christian life. The ideal of the "Christian nation" bound all subjects to an observance of the Christian ethic as interpreted by the Kirk and as enforced both by her officers and the civil power.

In sincerity and with a passionate desire to fulfill the word of God the Kirk sought to impose the truth (as they understood it) on all the subjects of the Kingdom, that the entire country might give glory to God. A discipline was established which would best ensure that sin and scandal were kept at a minimum. Offenders were cited and penance required in order to keep the church pure that it might shed only honour on God. The various penalties imposed were attempts to bring delinquents to repentance and return them to a Christian life in the church. With kirk-sessions sitting as ecclesiastical courts in each parish, wrongs would be pointed out and punished. By this the people would be enlightened and the Kirk purified.

If one is selective in the information he presents, two opposing views of the discipline in the period can be presented. One view shows the work of the judicatories as being efficient and fair. The other view points out the system as inefficient and tyrannical. A reasonable argument might be provided for either viewpoint.

Was the system efficient? Visitors to Scotland indicated that they found immorality restrained and the Kirk's defenders claimed a pure church (pages 14 and 15). In its work the church was supported by the government and magistrates thereby adding civil sanctions to the moral persuasion of the ecclesiastical judicatories (pages 43, 46 and 52). This was best exemplified in the position of session bailie (page 53). The elders investigated and supervised a small district in which they took notice of all offences both large and small (pages 65 and 69). The necessity of possessing a "testificate" and a communion token, the need to have marriage banns proclaimed and the natural desire for infant baptism added to the efficiency of the system (pages 71, 73, 164, and 74).

Was the system fair? Its penalties were in keeping with the society of the day and with the punishments used by the civil powers (pages 1 and 2). Ministers were exhorted to execute discipline impartially and along with other officials of the church were themselves subject to a strict enforcement of the rules of deportment (pages 69 and 187). Far from objecting to the system, many of the people welcomed it and initiated processes themselves

(pages 12 and 70). When a process was heard, the accused was able to question the witnesses of which there had to be at least two (pages 64 and 80). If the supposed delinquent disagreed with the sentence he was free to appeal to a higher judicatory which would quite often show great patience in reviewing a particular case numerous times (pages 98 and 198). In the records are found many instances of church courts acting with understanding and/or leniency (page 218).

On the other hand, was the system inefficient? There was no attempt to define such a term as "Sabbath breach" resulting in confusion as to where to draw the line (pages 94 and 226). The use of the "narrative" like the court verdict of "not proven" left cases in a very unsatisfying state (page 92).

Everyone did not respond to discipline. The Act of Toleration freed members of other communions from any obligations toward the established church (page 57). Offensive scandals, such as incest and rape, still occurred (pages 168 and 172). Misbehaviour within the church itself during worship, was not unknown (page 121). There were those who fled the parish to escape discipline (page 102), and some who were contumacious simply ignored their summons (page 103), therefore many cases had to be passed on to higher judicatories (page 111). Many offenders repeated (page 111). The presbyteries' time was occupied mostly in considering cases of relapse in fornication and adultery (pages 152 and 157). The judicatories actually settled on

very few cases. The Kirk-sessions and presbyteries, whose records were examined, decided on only two or three cases each year (page 216). Indeed, there were years when no cases were disciplined (page 217).

Was the system tyrannical? The Kirk's opponents said, yes (pages 11 and 12)! They complained at the Kirk's morality which censured gaiety and frowned on music, dancing, weddings and wakes (page 135). They resented its intrusion into the private world of neighbourhood quarrels and married life (pages 135 and 163). Certainly there were many who did not take kindly to the church's attempt to structure their lives. Ministers and elders were prominent recipients of both slander and physical abuse (pages 128 and 131). The system was at times misused. Old cases were disciplined contrary to the time limitation set forth in the Form of Process (page 79). Money was accepted in place of public appearances (page 95).

It is difficult today to agree with a system that disciplined superstition, mental illness and the practice of folk medicine, as charming and witchcraft (page 176); that was so thorough in its investigations as to employ "prickers" and to draw women's breasts (page 76) and that made occasional use of corporal punishment (page 96). We are unable to forget that such a system contributed in part to babies being abandoned in the fields (page 156) and to the murder of supposed witches (page 154).

Did the system of discipline enable the Kirk to achieve

its goal of a pure church and of a nation glorifying God? The answer must be, no. They tried to impose morality from without and they failed. The system was comprehensive enough, but the people were not extraordinary. Men and women offended against God's will and clergymen misused it. Let it be said to the credit of the Kirk that it tried to achieve an end for which we all long. Its methods were in keeping with the times. The tyranny and harshness that are to be found in the church of the eighteenth century were no strangers to the age. The impartiality of the system and the sincerity of the great majority of the men seeking to implement it, stand as a credit to the Church of Scotland.

R.M.C.

APPENDIX A

The FORM OF PROCESS

Chapter 1

Concerning Church Government, Discipline, scandals,
and Censures in General.

1. Our Lord Jesus Christ hath instituted a government, and governors ecclesiastical in his house, with power to meet for the order and government thereof; and to that purpose, the apostles did immediately receive the keys from the hands of their Lord and Master Jesus Christ, and did use and exercise the same upon all occasions, and Christ hath from time to time furnished some in his church with gifts for government, and with commission to exercise it when called therunto, and has promised his presence to be with them to the end of the world.

2. It is agreeable to and founded on the word of God, that some others, besides these who labour in the word and doctrine, be church governors, to join with the ministers of the word in the government of the church, and exercise of discipline and oversight of the manners of the people, which officers are called ruling elders: As also, that the church be governed by several sorts of judicatories, and one in subordination to the other, such

as kirk-sessions, presbyteries, provincial synods, and general assemblies.

3. Church discipline and censures, for judging and removing of offences, are of great use and necessity in the church, that the name of God, by reason of ungodly and wicked persons living in the church, be not blasphemed, nor his wrath provoked against his people, that the godly be not leavened with, but preserved from the contagion, and stricken with fear, and that sinners who to be censured may be ashamed, to the destruction of the flesh, and saving of the spirit in the day of the Lord Jesus.

4. Nothing ought to be admitted by any church judicatory as the ground of a process for censure, but what hath been declared censurable by the word of God, or some act of universal custom of this national church agreeable thereto; and the several judicatories of this church ought to take timely notice of all scandals: but it is judged, that if a scandal shall happen not to be noticed in order to censure for the space of five years, it should not be again revived, so as to enter in a process there anent, unless it be of an heinous nature, or become again flagrant; but the consciences of such persons ought to be seriously dealt with in private, to bring them to a sense of their sin and duty.

5. These assemblies or church judicatories before mentioned, have power to convene and call before them any persons within their own bounds, whom the ecclesiastic

business which is before them doth concern, either as party, witness, or otherwise, and to examine them according to the nature of the affair, and to hear and determine in such cases as shall orderly come before them, and accordingly dispense church censures.

6. If a person be charged with a scandal, who lives within the bounds of another parish, the kirk-session of the parish where that person resides should be desired to cause cite that person to answer before the session in whose bounds the scandal happened, and the same course is to be followed in such cases by the other judicatories of the church, seeing for order's sake they should not presume to exercise their authority without their own bounds.

7. The minister of the word being an office above that of the ruling elder, cannot be liable to the censure of the kirk-session, but to the superior judicatories of the Church.

Chapter II

Concerning the Entering Processes, Citation of Parties and Witnesses, and taking Depositions, and ancient Fugitives from Discipline.

1. Members of kirk-session are wisely to consider the information they get of scandals, and consult with their minister thereunto, even before the same be communicated to others, that thereby the spreading of the scandal may be prevented, and it may be removed by private admonition according to our Lord and Saviour's rule, Matth. xviii.15,

which, if amendment follow, is the far better way of gaining and recovering a lapsed brother, whereas the needless spreading of a scandal does sometimes harden the guilty, grieve the godly, and is dishonourable to religion.

2. When any business is moved in a church judicatory, whether by information, petition, or otherwise, they are, in the first place, to consider whether the matter in its circumstantiated case be proper for them to enter upon, and whether it be orderly brought in, and proper for them to cognosce and discuss it themselves, or prepare it for their superior judicatories; and should endeavour to shorten their work as much as with the edification of the church they can, especially as to the head of scandal, but still on all occasions the office-bearers in the house of God are to shew all prudent zeal against sin.

3. In proceeding in all causes where there is any person or parties concerned, the judicatory is to see, that, before they proceed, these persons or parties be duly cited before them by a legal and timely citation in writ bearing its cause, either at the instance of a party complaining, or at least by order of the judicatory; and if they be residing within the parish, the same may be upon forty-eight hours advertisement, and the execution of the summons bearing its cause, and made before two or three witnesses insert, is to be returned by the head or officer in writing, and the persons cited, called at the door; and this is especially to be observed by presbyteries

and other superior judicatories of the church.

4. Sometimes it may be fit that the party be privately spoken to, before any citation be given or process begun, for their better gaining; in which case, the minister is to exercise his own discretion, and take the concurrence of elders and others with him; but if the party cited as above appear not, there ought to be a second and then a third citation given by the order of the sessions and presbyteries, either personally, or left at their dwelling-house, before the judicatory declare the person contumacious, unless the party be cited to appear before a superior judicatory, the party having actually appeared before the inferior judicatory, and being cited apud acta to appear before the superior, and the same marked in the minutes, or having been declared contumacious before the cause was brought before the superior judicatory.

5. All citations apud acta are peremptory, and if instructed, infer contumacy if not obeyed.

6. If the person does not appear on the third citation, or upon a citation apud acta, and no relevant excuse adduced and verified, though in that case he be censurable for contumacy, yet it may be fit the judicatory proceed to take cognition, either by examining witnesses upon oath, or by other documents of the verity of the scandals related against him, before they censure him for contumacy.

7. If the party appear, then the moderator is to inform the person of the occasion of his being called, and to give

him, if desired, a short note in writing thereof, with the names of the witnesses that are to be made use of.

8. There seems to be no need of accusers or informers in ecclesiastic processes, where the same are not raised at the instance of a party complaining formally, but the party, if cited by order of the judicatory, is to answer the judicatory in what is laid to his charge; yet so, that if the party cited be found innocent and acquitted, those who informed the judicatory, whether the party require it or not, ought to be noticed, for either their calumny or incoherence, as the judicatory shall find cause.

9. If there be witnesses to be made use of in the process, a list of their names ought to be given to the defenders some time before, or at least at their appearance, and their witnesses ought to be timely cited to give evidence; and if they refuse after three citations given, and executions returned, may be proceeded with as contumacious; or if judged needful, and after the first or second citation, application may be made to the civil magistrate, that he may oblige them to appear.

10. Before the witnesses be judicially examined, the accused person is to be called, and the relevancy of the libel discussed, and if the defender compare, he may object against any of them, and if the objection be relevant, and made evident to the judicatory, the witnesses are to be cast; but a person's being the delator or informer, doth not hinder him to be a witness, except in the case where

be formerly complained for his own interest, or of pregnant presumptions of malice against the person accused.

11. Though there be no relevant objection, yet the witnesses are solemnly to be purged of malice, bribe, or good deed done or to be done, and of partial counsel.

12. The witnesses are to be sworn and examined in the presence of the accused party, if appearing; and he may desire the moderator to propose such questions or cross questions to the witnesses as may tend for his exculpation, which, if the judicatory think pertinent, are to be proposed, but no accused person is to interrupt the witness, or speak during the time of deposition.

13. If the party accused do before probation offer grounds of exculpation to be proven by witnesses, the moderator and clerk, if required, are to give warrant to cite the witnesses upon the party's charges, the relevancy of the offered exculpation being first considered and sustained by the judicatory; and if the exculpation be fully proven as to the substance of the scandal, all further proof of the libel and accusation must there sist, and the defender is to be absolved; as, if the libel be special as to the time and place of a fact, and the accused were pregnantly allege and clearly prove alibi. But if the substance of the scandal be once sustained and deposed upon, there can be no place for exculpation, unless it be as to some extenuation or alleviating circumstances not contrary to, but consistent with, the deposition already

taken.

14. If the witnesses cannot subscribe their names to their deposition, the clerk is to mark that they decline they cannot write, and the moderator is to subscribe the same, whether they can subscribe or not.

15. After the depositions are ended, the parties being removed, the members of the judicatory at the same or some other time appointed, are to advise the cause, and then and then to reason the affair calmly, speaking always to the moderator one after another, without interrupting one another, using no reflecting language to or of one another, nor too long harangues or digressions.

16. If any person or persons under process for scandal abscond, they should, after being called before the judicatory and not appearing, be cited first from the pulpit of the parish where the process depends, and where they reside, and if they do not thereupon appear before the judicatory before whom the process depends, they are by order of the presbytery, to be cited from the pulpits of all the kirk within their bounds, to appear before the presbytery; and if they do not then appear, they are to be declared fugitive from church discipline, and the same intimate in all the kirk within the bounds of the presbytery; desiring, that if any knows of the said fugitives, they may acquaint the minister or elder of the bounds thereof, and the presbytery are to sit there until they get further notice of these persons.

Chapter III

Concerning Swearers, Cursers, Profaners of the Lord's Day, Drunkards, and other Scandals of that Nature.

1. It may fall out that one single act of drunkenness or breach of the Lord's day, disobedience to parents, or of swearing, cursing, scolding, fighting, lying, cheating, or stealing, may be clothed with such circumstances as may be a just ground of process immediately, and even bring the persons guilty under the censure of the lesser excommunication and suspension from the benefit of the sealing ordinances, and require their appearance in presence of the congregation to be rebuked, before relaxation; but the weight of this is duly to be pondered, and church judicatories, and members thereof, are to consider whether the private admonition of persons alleged and found guilty of the above scandals, if not clothed with such circumstances or the bringing them to public, will tend most to edification, and proceed accordingly.

2. But ordinarily in all such offences, the guilty for the first fault would be spoken to in private by the minister or an elder, and admonished; and on the promise from a sense of guilt to amend, they may sit there.

3. But if the person relapse, he should be called before the session, and if found guilty, may be there judicially rebuked; where the session, on promise, from a due sense of sin, to amend, may again sit.

4. But if the person amend not after that, the session

should orderly proceed, unless repentance appear and due satisfaction be offered, till they inflict the censure of the lesser excommunication and suspension from the benefit of the sealing ordinances, under which the censured are to lie till amendment and reformation.

5. With respect to scandals, the grossness whereof makes it necessary to bring the persons guilty oftener than once before the congregation, the rules prescribed by the fourth act of the General Assembly, anno 1705, are to be followed.

6. If the guilty persons continue in this condition, or lie under the censure of the lesser excommunication a considerable time, and yet be found frequently relapsing in these vices they are censured for, it may be constructed such a degree of contumacy, and so aggravate the crime, as to found a process of the censure of the higher excommunication, which is to be inflicted, or not, as may seem most to the reclaiming of the guilty person and edification of the church.

Chapter IV

Concerning the Sin of Fornication, Adultery and
Scandalous Carriage tending thereto.

1. In relations about the sin of uncleanness, it falls frequently out, that when the matter is put to the strictest trial, all that can be proven is but presumptions of guilt or scandalous behaviour, and not the act of uncleanness, the same being a work of darkness, and therefore this should

oblige the kirk-session to be very cautious how to admit the public entering a process without good warrant, where there is not a child in the case, unless the scandal be very flagrant.

2. Many of these actions which give occasion to the raising a scandal of uncleanness, are such as are not themselves alone publicly censurable, but to be past by with a private rebuke of admonition.

3. Yet some of these actions which come under the name of scandalous behaviour may be so lascivious and obscene, and clothed with such circumstances as may be as offensive as the act of uncleanness itself, and as censurable.

4. If a married woman, whose husband hath been notoriously absent for a considerable time, beyond the ordinary time that women use to go with child, be found with child, this also may give ground to a kirk-session for a process against her; but in this case judicatories would be prudent in considering well all circumstances, and whether or not the person hath been always of entire fame before, as also how the public fame now runs.

5. When an unmarried woman is known to be with child, the same gives ground to a kirk-session for a process against her; and after she is cited before the session, and appears, she is to be interrogate who is the father of the child, and though in other cases the divulging of a secret may be very imprudent, and indeed the raising of a scandal, yet in this case where there is a child, whereby there is an undeniable scandal, and the keeping secret of the father

a ground of greater offence, and of suspecting many innocent persons, if she discover not the father, she is to be looked upon as confessional.

6. Prudence may sometimes require that the person who nameth to be the father of the child be informed thereof, and speak to privately; and if he deny the same, he is seriously to be dealt with to confess, but if he still deny, then the session is to cause cite him to appear before them.

7. In this process, when the delated father compeareth, he is to be interrogate, and if he deny, he is to be confronted with the woman, and the presumptions as particularly held forth as possible; and all along there should be private treating with him, in all weakness, charity, and seriousness; and if, after all this, he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as suspicious frequenting her company, or being solus cum sola in loco suspecto, or in suspect postures and such like, which he cannot disprove to the satisfaction of the session, may so lay the guilt upon him as to shew him, that there appears no other way of removing the scandal, but his appearance to be publicly rebuked therefor: If he will not submit himself to be rebuked ~~absolutely~~ it perhaps may be more for edification that a true narrative of the case be laid before the congregation, and intimation given that there can be no further procedure in that matter, till God in his providence

give further light, and to sit there at the time, than that an oath be pressed, and upon refusal proceed to the higher excommunication; but if the person accused do offer his oath of purgation, and crave the privilege thereof, the presbytery may (if they shall judge it for edification and removing of the scandal) allow the same, which may be to this purpose:-

"I, A.B. now under process before the presbytery of _____ for the sin of _____ alledged to be committed by me with C.D. and lying under that grievous slander, being reputed as one guilty of that sin; I, for ending of the said process, and giving satisfaction to all good people, do declare before God and this _____ that I am innocent and free of the said sin of _____ or having carnal knowledge of the said C.D. and hereby call the great God, the judger and avenger of all falsehood, to be witness and judge against me in this matter if I be guilty; and this I do by taking his blessed name in my mouth, and swearing by him, who is the great judge, punisher, and avenger as said is, and that in sincerity of heart, according to the truth of the matter and mine own conscience, as I shall answer to God in the last and great day, when I shall stand before him to answer for all that I do in the flesh, and as I would partake of his glory in heaven after this life is at an end."

8. In taking this oath for purgation, all tenderness and caution is to be used; nor is the occasion to press any man

thereto, but they are to deal with him and his conscience as in the sight of God; and if he offer to give his oath, the judicatory are to accept it or not as they shall see cause, and then to proceed to remove the scandal, with the advice of the presbytery, as may be most to edification; but this oath is not to be taken in any case but this, when the presumptions are so great that they create such jealousy in that congregation and session, that nothing will remove the suspicion but the man's oath of purgation, and when his oath will probably remove the scandal and suspicion; in all other cases this oath is in vain, and so should not be admitted, and never but by the advice of the presbytery.

9. This oath for purgation is to be taken either before the Kirk-session or presbytery, or the congregation, as the presbytery shall determine; and if the oath be taken before the session or presbytery, it is to be intimate to the congregation that such a person hath taken such an oath, and the party may be obliged to be present in the congregation, and may be put publicly to own his purging himself by oath, and so be declared free from the alleged scandal.

10. After an end is made as above with the delated father, and if after all serious dealing, and due diligence, she give no other she is to be censured according to the quality of the offence confessed by her, without naming the person delated by her; the judicatory reserving place

for further censure upon further discovery.

11. If the woman who hath brought forth the child doth declare she knoweth not the father, allying she was forced, as in the fields, by a person unknown, or any the like reason; in these cases, great prudence is to be used, the former behaviour of the woman exactly searched into, and she seriously dealt with to be ingenuous; and if she hath been of entire fame, she may be put to it to declare the truth as if she were upon oath, but not without the advice of the presbytery, and no formal oath should be taken; and if the woman confess she was not forced, but doth not know the man, whether married or unmarried, the same censure is to be inflicted upon her as in the case of adultery.

12. If a person doth voluntarily confess uncleanness, and if there be no child, and the case be brought to the kirk-session, the session is to enquire what presumptions there are of the truth of the thing confessed, or what may have moved the person to make that confession, whether it floweth from disquietness of mind, or from sinister design, as when a man suing to a woman for marriage is denied, and for revenge, or for to obtain his desire, spreads the report that he hath been guilty with her, they are to be dealt with according as the presumptions upon search are found, or not.

13. If it be found that there is no ground for the confession, and that it is false, the person confessing is to be censured as defaming himself, and likewise as a slanderer

of the other party; and withal application is to be made by the session to the civil magistrate, that he may be punished according to law.

14. If there be need of witnesses, the directions formerly mentioned, chap. 2d, are to be followed.

15. When persons guilty of uncleanness live one in one parish, and another in another parish, the process against them and censures are to be before the session of the parish where the woman liveth, or where the scandal is most notour.

16. If a scandal of uncleanness be committed where neither party resides, as if persons having fixed their residence in one parish, do commit uncleanness in another parish, or perhaps in the fields, or in the time of fairs or markets; in these cases, they are to be processed and censured where their ordinary abode is, except the place of their abode be at a considerable distance from the place of where the sin was committed, and the scandal be most flagrant where it was committed.

17. When there is a scandal of uncleanness whereof persons are guilty, living in different parishes, the session where the sin was committed is to acquaint the other sessions where any of the persons resides, who are ex debito to cause summon those persons to appear before that session, where the scandal is to be tried.

18. When a person is convicted of a scandal by a session of another congregation than his own, and the censure of

the lesser excommunication is inflicted, the session is to send an account thereof to that session to which he belongs; but there is no need of any other sentence of his own session to fix the censure on him, but only a public intimation thereof to be made in his own parish.

19. When a person is censured and absolved from his scandal in another congregation than where he lives, he is to bring a testimonial of his absolution, which is to be intimate to the congregation he lives in, if the scandal be also flagrant there; otherwise it will be sufficient to intimate the same to the session; and the same is to be done in the case of the profession of repentance where there has been a sentence of the lesser excommunication.

Chapter V

Concerning Appeals from a Kirk-session to a Presbytery, &c.

1. All persons who judge themselves lased by the procedure or sentence of the kirk-session, may appeal to the presbytery, by declaring and protesting at passing of the sentence; and should thereupon, according to the eighth act of the General Assembly, 1694, give in the appeal with the reasons thereof in writ, to the moderator or clerk of the session, within the space of ten days after the time of appealing, and procure extracts thereof, and present the same to the next meeting of the presbytery thereafter, if there be competent time, at least ten days free betwixt

the time of appealing and the meeting of the presbytery; and should then insist in the appeal; wherein if the appellant fail, the appeal inso facto fails and becomes null, and the appellant is to be held as contumacious, and proceeded against accordingly by the kirk-session.

2. When an appeal is brought from a kirk-session to a presbytery, the presbytery is to consider whether the cause is of that nature, as it behoveth at length to come to the presbytery by the course of discipline, before the final determination thereof, as if it be in a process of alleged adultery or such like; then the presbytery, to save themselves time, may fall upon the consideration of the affair without insisting much upon the bene or male appellatum, though it seem to be preposterously appealed.

3. But if the cause be such as the kirk-session are the competent and proper judges of, even to its ultimate decision, and if there have been no cause given by the kirk-session, by their breaking the rules of an orderly process, either by the course of the process, or by the incompetency of the censure, the presbytery is not to sustain the appeal.

4. If the presbytery do not sustain the appeal, and find there hath been some fault, passion, or culpable mistake in the appellant, the presbytery is to inflict some censure, such as a reproof before the presbytery, or appoint an acknowledging of their precipitancy before their own session or such like, on those appellants they find to have been malicious and litigious, thereby to prevent unnecessary

appeals; and that beside resitting back to the session, to stand either to the censure of the session, if it be inflicted already, or to sit themselves during the process, if it be depending.

5. If the appeal be sustained, and yet upon proceeding on the cause the presbytery find the appellant censurable, it is always to be minded, that whatever censure be inflicted to remove the offence he hath given to the presbytery, yet the appellant, if found guilty, is to undergo a censure, either before the kirk-session or congregation he belongs to, such as the presbytery thinks he deserves, else presbyteries will always be troubled with appeals.

6. If, on the other hand, on trial of the process, the presbytery find the kirk-session hath unwarrantably proceeded, either in contributing to the raising of a scandal, or inflicting the censure without sufficient cause, and thereby the appellant lased; the presbytery is not only to assuage the appellant, but to take such ways as may be proper and effectual to vindicate the appellant's innocence, and wipe off the scandal taken at him.

7. Herein the presbytery is to exercise great prudence, doing justice to the innocent, yet so as not to weaken the kirk-session's authority in that congregation, if in justice it can be avoided.

8. But such an emergent may very well occasion the presbytery's giving the minister and elders of that session suitable injunctions and rules to walk by, or private admon-

itions, or to call for a visitation of their session register.

9. The same method is to be followed in appeals from presbyteries to synods, and from synods to general assemblies.

10. An appeal being made by parties, should sist the execution of the sentence appealed from, only while the appeal is duly and diligently prosecuted, and may thereby be determined; otherwise not, unless the judicatory appealed to receive the appeal, and take the affair before them, and in that case the judicatory appealed from is to sist until the appeal be discussed.

Chapter VI

Concerning Processes which natively begin at the Kirk-session, but are not to be brought to a final determination by them.

1. There are some processes which natively begin at the Kirk-session, which, for the atrocity of the scandal, or difficulty in the affair, or general concern, the session having the opportunity of frequent meetings of the presbytery to have recourse unto, do not determine of themselves; such as scandals of incest, adultery, trillapso in fornication, murder, atheism, idolatry, witchcraft, charming, and heresy and error, vented and made public by any in the congregation, schism and separation from the public ordinances, processes in order to the highest censures of the church, and continued contumacy; but the Kirk-session

having received information of such gross scandals, they are to weigh the same according to the rules and directions prescribed them in processes which belong to their peculiar province; and if they find good ground for a process, they are to deal with the person accused to confess that which now cannot be hid or amended, till satisfaction be made to the church, which, when done, the session is to refer the case, and send an extract of their procedure thereunto to the presbytery.

2. When there is no confession of the scandals above mentioned, the session are not to proceed to lead probation by witnesses or presumptions, till an account of the matter be brought by reference to the presbytery as aforesaid, and the presbytery do thereupon appoint the session to proceed and lead probation; and after probation is led, the same is to be brought to the presbytery, who may inflict what censure they see cause.

3. Sometimes it will fall out that the process is so clear, as in a case of judicial confession, that the kirk-session may summon the delinquent when before them and act, to compare before the presbytery, without previous acquainting them thereof, but where there is any difficulty, the kirk-session should inform the presbytery, and take their advice before a party be summoned before them.

4. When the party or parties compare before the presbytery, if they confess and profess repentance for their sin, then the presbytery having gravely rebuked, and seriously

exhorted the party or parties, are to determine the censure, and prescribe the time and place of the parties, their profession of repentance publicly in the church of that congregation where the process began, the scandal being there to be taken away, or recall them to the session to receive orders thereon.

5. It is thought more fit that the delinquents be appointed to remove the scandal in the congregation where the offence is most flagrant, especially if they reside there, rather than in the place where it was committed, if it be not public there, and that intimation of the removing thereof be made in other places, if the judicatory shall find it needful.

6. When persons censured for these grosser scandals do apply to the kirk-session for relaxation, they may both be privately conferred with, and likewise their acknowledgments heard before the session; but they ought not to be brought before the congregation, in order to their absolution, nor absolved, but by advice and order of the presbytery.

Chapter VII

Concerning Processes against Ministers

1. All processes against any minister are to begin before the presbytery to which he belongeth, and not before the kirk-session of his own parish.

2. The credit and success of the gospel (in the way of an ordinary mean) much depending on the entire credit and reputation of ministers, their sound doctrine and holy conversation, no stain thereof ought lightly to be negligently enquired into, or when found evident, ought to be slightly censured.

3. And because a scandal committed by a minister hath on these accounts many aggravations, and once raised, though it may be found to be without any ground, yet it is not easily wiped off; therefore a presbytery would exactly ponder by whose information and complaint it comes first before them; and a presbytery is not so far to receive the information, as to proceed to the citation of a minister, or any way begin the process, until there be first some person, who under his hand gives in the complaint with some account of its probability, and undertakes to make out the libel. 2do, Or at least so before the presbytery undertake to make it out, under the pain of being censured as slanderers. Or, 3tio, That the fame cleaves of the scandal be so great, as that the presbytery, for their own vindication, see themselves necessitate to begin the process, without any particular accuser; but the presbytery in this case would be careful, first, to enquire into the rise, occasion, branches and grounds of this fame cleaved.

4. All Christians ought to be prudent and wary in accusing ministers of any consurable fault, as that they ought neither to publish nor to spread the same, nor accuse

the minister before the presbytery, without first acquainting the minister himself, if they can have access thereto, and then, if need be, some of the most prudent of the ministers and elders of that presbytery, and their advice got in the affair.

5. If there shall be ground found to enter in a process against a minister, the presbytery should first consider the libel, then order him to be cited, and to get a full copy, with a list of the witnesses' names to be led for proving thereof, and a formal citation in writ is to be made either personally or at his dwelling-house, bearing competent time allowed to give in answers to the libel, and his just defences and objections against witnesses, at least ten free days before the day of appearance, and the citation should bear the date when given, and the names of the witnesses to the giving thereof; and the execution bearing its date, with the names and designations of the witnesses; should be made in writ, and signed by the officer and witnesses; which being accordingly returned, he is to be called, and if he appear, the libel is to be read unto him, and he is to be enquired if he has any answers to give in to the libel, that they may be read and considered, in order to the discussing of the relevancy; and if the presbytery find the same, and there is cause to insist, they are to endeavour to bring him to a confession, whereby he may most glorify God; and if he confess, and the matter confess to be of a scandalous nature, censurable in others, such as the sin of uncleanness,

or some other gross scandal, the presbytery (whatever be the nature of his penitency, though to the conviction of all) are instantar to depose him ab officio, and to appoint him in due time to appear before the congregation where the scandal was given, and in his own parish, for removing the offence, by the public profession of his repentance.

6. If a minister be accused of any scandal, and cited to appear before his own presbytery, and do absent himself by leaving the place, and be contumacious without making any relevant excuse, after a new public citation and intimation made at his own church when the congregation is met, he is to be holden as confess, and to be deposed and censured instantar with the lesser excommunication; but if after some time he do not return and subject himself to the censures of the church, he may be proceeded against till he be censured with the greater excommunication, if the judicatory see cause for it.

7. If the minister accused do appear and deny the fact after the relevancy is found, the presbytery proceeding to probation, and to find the truth of the matter, all the circumstances are to be exactly canvassed, and the accused heard to object against the witnesses. As also, he should be allowed to be present at the examination, and modestly to cross interrogate, and then the reputation of the witnesses and their ability duly regarded, and the examinations considered. If, after consideration

of all these, the judicatory shall find the scandal sufficiently proven, they are to proceed to censure, as advised in the case of confession in paragraph 5th.

8. If the matter laid to the minister's charge be such as in their own nature manifestly subvert that order, unity, and peace, which Christ hath established in his church, or unsoundness and heterodoxy in doctrine, then great caution would be used, and the knowledge and understanding of witnesses much looked into; and withal, if the errors be not gross and striking at the vitals of religion, or if they be not pertinaciously stuck unto, or industriously spread, with a visible design to corrupt, or that the errors are not spreading among the people, then lenitives, admonitions, instructions, and frequent conferences are to be tried to reclaim without cutting off, and the advice of other presbyteries sought; and unless the thing be doing much hurt, so as it admits of no delay, the synod or general assembly may be advised with in the affair, and the same intimate to the minister concerned.

9. If the libel and complaint brought against a minister be a multitude of smaller things laid together, as several acts of negligence or other unsuitable actions, the presbytery in proceeding therein are to make a presbyterial visitation of that parish to which the minister belongs, and at the said visitation, are first to see if any of these things now laid to the minister's charge were

committed prior to the last presbyterial visitation of that parish, and whether they were then laid to his charge, and if they were not, it would be tried how they come to be laid to his charge now.

10. If the presbytery find these things laid to his charge to be committed since the last visitation, or find a satisfying reason wherefore they were not then tabled, they are to enquire what diligence hath been used in acquainting the minister with the offence taken at these things when first committed by him, and how far the minister hath been guilty of giving offence, after he knew offence to be taken.

11. It would likewise in this case be enquired, whether any of the complainers did first in a prudent, private way, inform any of the neighbour ministers of some of these things committed by their minister, who is now challenged, before these offences came to be so many, as to merit a public and solemn trial, and accordingly the presbytery is to judge.

12. If the presbytery find, upon trial, the complaint to resolve on the minister's having committed such acts of infirmity or passion as, considering all the circumstances, may be either amended and the people satisfied, and no such offence taken, or at least not to remain, so as to hinder the minister's profiting the people, and that the offence was taken by the minister's own people only or mainly; then the presbytery is to take all prudent ways to satisfy and

reclaim both minister and people, and do away with the offence.

13. But before a minister deposed for scandalous carriage can be restored to the exercise of the ministry, there should not only be convincing evidences of a deep sorrow for sin, but an eminent and exemplary humble walk, and edifying conversation, so apparent and convincing as hath worn out and healed the wound the scandal gave.

14. Immediately on the minister's being deposed by the presbytery, the sentence is to be intimate in his congregation, the church declared vacant, the planting thereof with another minister hastened, and never delayed on the expectation of his being reposed, it being almost impossible that ever he can prove useful in that parish again.

Chapter VIII

Concerning Processes in order to the Censure of the greater Excommunication.

1. Since there is a distinction betwixt the greater and the lesser excommunication, it seems that whatever have been the causes of the first process, yet ordinarily all processes that are in order to the greater excommunication are to be grounded on manifest contumacy, or obstinate continuance in scandalous practices; and where there is no manifest contumacy, or continuance as aforesaid, the lesser excommunication need only have place. Yet in some extraordinary cases, the church, according to Scripture warrant, both

summarily excommunicated persons guilty of notour atrocious scandalous sins, to shew the church's abhorrence of such wickedness.

2. Even where there hath been a scandal delated, and contumacy following by not appearing, it would be considered, whether any scandalous practice hath been proven or not; if not proven, then only the simple contumacy is to be proceeded against, for which it were hard to go a greater length than the lesser excommunication.

3. If the scandal hath been proven, and the censure of the lesser excommunication intimated, as in chapter third, it seems most reasonable that there be no further proceeding, unless the scandal be gross, or of an heinous nature, or that it is spreading and infectious, as in heresies or schism in the church: in which cases, contumacy is to be proceeded against in order to the greater excommunication.

4. The kirk-session having brought the process to an intimation of the censure of the lesser excommunication, before they inflict the same, they are to refer the affair to the presbytery, bringing their whole proceedings before the presbytery in writ, that the presbytery may thereby have a clear and full view of the whole affair.

5. The presbytery finding the kirk-session hath orderly proceeded, and that the lesser excommunication is not sufficient, and that the affair is so weighty as to oblige them to enter on the process, they are to cause their

officer to cite the scandalous person.

6. If the party appear, then the presbytery is to proceed in the enquiry of the accused, about the scandal alleged and libelled; and if he deny it, then they are to proceed and lead probation, as in other cases.

7. But if the party appear not, but condemn the citation, the presbytery causeth renew the same, until he hath got three citations; and after the three citations, he is to be cited out of the pulpit; and for the further conviction of all concerned, intimation is to be made that the judicatory will proceed and enquire into the presumptions or probation of the guilt, and this is to be done although the delinquent be absent.

8. Then the presbytery is to order the minister of the congregation next Sabbath, after forenoon's sermon, to acquaint the congregation what proceedings the kirk-session first, and thereafter the presbytery, hath made in the affair, and how contumacious the party was, and that the presbytery intended to proceed to the highest censure: and the minister is gravely to admonish the party (if present) to repent and submit himself to the discipline of the church, threatening him, if continue impenitent, that the church will proceed; yea, though he be absent, the minister is to acquaint the people, that the church requires him to repent and submit as abovesaid, under the foresaid certification.

9. There should be three public admonitions, and a

presbytery should intervene betwixt each admonition; and if, after all, that person continue impenitent or contumacious, the same is to be represented to the presbytery, who are thereupon to appoint public prayers thrice to be made, in which the minister is to exhort the congregation seriously to join with him in prayer for the scandalous, impenitent, or contumacious person, which he is solemnly to put up to God, humbly begging that he would deal with the soul of the impenitent, and convince him of the evils of his ways.

10. These public prayers of the church are to be put up three several Sabbath days, a presbytery (where its meetings are more frequent, once a month at least) intervening between each public prayer, both to shew the church's tenderness towards their lapsed brother, their earnestness to have him reclaimed, and likewise to create a greater regard and terror of that dreadful censure, both in the party and in all the people.

11. If, after all, the scandalous person makes no application, but continues impenitent, the presbytery, after prayer, is to pass sentence, and appoint a minister to intimate the same, and to shew the presbytery's resolution is to proceed upon such a Sabbath as they shall name, for pronouncing that dreadful sentence solemnly in face of the congregation, unless either the party, or some for him, signify some relevant ground to stop their procedure.

12. That day being come, it were fit the minister did preach a sermon. The minister should shew the congregation what he is going about, introducing the narrative of the process, with a discourse concerning the nature, use, and end of church censures, particularly that of the greater excommunication, if he hath not done it fully in his sermon.

13. The narrating all the steps of the process in order, shewing the church's faithfulness and tenderness towards the scandalous person, and declaring his obstinate impenitency; and that now, after all other means were used, there remained only that cutting off the scandalous person from the society of the faithful, and intimating the church's warrant and order to him so to do.

14. And before the minister pronounce the sentence, he is to pray, and desire all the congregation to join with him therein, that God would grant repentance to the obstinate person, would graciously bless his own ordinance, and make the censure effectual, both to edify others, and to be a means to reclaim the obstinate sinner.

15. Then after prayer, the minister is, with great gravity and authority, to pronounce the censure; shewing his warrant from our Lord's command, and the Apostle Paul's direction, and recapitulating the presbytery's warrant in obedience therunto, and resuming the scandalous and obstinate person's behaviour, whom he is to name; he, therefore, in the name and authority of our Lord and

Master Jesus Christ, doth in verbis de praesenti pronounce and declare him or her excommunicated and shut out from the communion of the faithful, debarring that person from their privileges; and in the words of the Apostle, delivering that person over to Satan, which sentence is to be intimate according to the 9th act of the Assembly anno 1704.

16. If after prayer, or before the censure be pronounced, the scandalous person do make any public signification of his repentance, and of his desire to have the censure stopt, the minister, upon apparent seriousness in the scandalous person, which he sheweth to the congregation, may thereupon delay pronouncing the sentence, till he resort to the presbytery at their next meeting, who are then to deal with the scandalous person as they shall find cause.

17. After the pronounciation of this sentence, the people are to be warned that they hold that person to be cast out of the communion of the church, and that they shun all unnecessary converse with him or her; nevertheless, excommunication dissolveth not the bond of civil or natural relations, nor exempts from the duties belonging to them.

18. Although it be the duty of pastors and ruling elders to use all diligence and vigilance, both by doctrine and discipline respectively, for preventing and

purging out such errors, heresies, schisms, and scandals as tend to the detriment and disturbance of the church; yet, because it may fall out through the pride and stubbornness of offenders, that these means alone will not be effectual to that purpose, it is therefore necessary, after all this, to employ the aid of the civil magistrate, who ought to use his coercive power for the suppressing of all such offences, and vindicating the discipline of the church from contempt.

Chapter IX

Concerning the order of proceeding to Absolution.

1. If, after excommunication, the signs of repentance appear in the excommunicated person; such as godly sorrow for having incurred God's heavy displeasure by his sin, occasioned grief to his brethren, and justly provoked the church to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God through Christ, and to reform his life and conversation, with an humble desire of recovering peace with God and his people, and to be restored to the favour of God and light of his countenance, through the blood of Jesus Christ, and to the communion of the church, and the presbytery upon his application be satisfied therewith, and judge that he ought to be absolved, and thereupon give warrant for his absolution; he is to be brought before the congregation, and there also to make free confession of his

sin and sorrow for it, to call upon God for mercy in Christ, to seek to be restored to the communion of the church, promising to God, through grace, new obedience, and more holy and circumspect walking as becomes the gospel, and that this appearances before the congregation be as often as church judicatories shall find may be for edification and trial of the professing penitent's sincerity; and being satisfied in this, then the minister and the congregation are to praise God, who delighteth not in the death of a sinner, but rather that he should repent and live; as also, for blessing the ordinance of excommunication, and making it effectual by his Spirit to the recovering of this offender, to magnify the mercy of God through Jesus Christ, in pardoning and receiving to his favour the most grievous offenders whensoever they unfeignedly repent and forsake their sin. But before the minister proceed to absolution, he is to pray with the congregation to this effect: "That the Lord Jesus Christ, Prophet, Priest, and King of his church, who with the preaching of the gospel hath joined the power to bind and loose the sins of men; who hath also declared, that whatsoever by his ministers is bound on earth, shall be bound in heaven, and also, that whatsoever is loosed by the same, shall be loosed and absolved in heaven, would mercifully accept his creature F., whom Satan of long time hath holden in bondage, so that he not only drew him to

iniquity, but also so hardened his heart, that he despised all admonitions, for the which sin and contempt, the church was compelled to excommunicate him from the society of the faithful; but now seeing the Holy Spirit by his grace hath so prevailed, that he is returned, and professeth repentance toward God, and faith toward our Lord Jesus Christ, that it may please God by his Spirit and grace to make him a sincere and unfeigned penitent, and for the obedience of our Lord Jesus Christ unto death, so to accept of this poor believing and returning sinner, that his former disobedience be never laid to his charge, and that he may increase in all godliness, so that Satan in the end may be trodden under feet by the power of our Lord Jesus Christ, and God may be glorified, the church edified, and the penitent saved in the day of our Lord."

2. Then shall follow the sentence of absolution in these or the like words: "Whereas thou N. hast for thy sin been shut out from the communion of the faithful, and hast now manifested thy repentance, wherein the church resteth satisfied, I, in the name of the Lord Jesus, before this congregation, pronounce and declare thee absolved from the sentence of excommunication formerly denounced against thee, and do receive thee to the communion of the church, and the free use of all the ordinances of Christ, that thou mayest be a partaker of all his benefits to thy eternal salvation."

3. After this sentence of absolution, the minister

speaketh to him as a brother, exhorteth him to watch and pray, and comforting him as there shall be cause; the elders embrace, and the whole congregation holdeth communion with him, as one of their own; and the absolution should be intimate in all the churches where the excommunication was intimate.

END OF THE FORM OF PROCEES

APPENDIX B

Miscellaneous Church Correspondence, MS.

Overtures Concerning Processes by Matthew Crawford - 1690.

1. If there be any delation by one elder of a scandal on ye paroch yn ye church session is to consider whither ye matter be such as deserves church censure & if ye matter be of such moment, then the minister & elder are to give one private rebuke if ye matter be of more moment, then ye church session is to appoint ye officer to summon them to ye next dyet.

2. If ye person cited doe not appear then he is to be cited a 2d time & if he compear not ye 2d time he is to be cited a 3d time & if he compear not yn before ye session he is to be cited to ye presbitry & if he compear not befor ye presbitry after citation he is by appointment of ye presbitry to be cited publickly befor ye congregation to compear befor ye presbitry. And if he compear not then pains is to be taken on him by ye minr & elders to bring him to subjection & obedience but if after all he remain obstinat he is to be declared contumacious. But if he appear befor ye presbitry they are either to proceed to ex mine witnesses or remitt him back to ye kirk session.

3. If ye person compear before ye session after citation he either confesses or denyes, if he confesses then he is to be censured by ye session according to ye nature of ye scandall if ye scandall be of a lesser manner & become habituall especially after former admonitions yn a rebuke

befor ye sessions ordinary, if a greater imminent yn ye
repute is to be befor ye congregation if ye scandall be
proper to ye church session for to meddle with, for in ye
case of trillapso fornication it is proper to ye presbiterie
to meddle wt ym.

4. If ye person deny, witnesses are to be cited (but it
is to be adverted that no accuser or informer be admitted
a witness except a minr & elder who are to inform ex-
officio) to prove ye scandall & when ye witnesses are
cited he is to be cited & inquired if he had anything to
object agt ye witness, if he propose any objection he is
to be heard, & if his objections be relevent in line ye
witnesses are not to be admitted if ye exceptions be not
manifest & resonant ye witnesses are to be admitted yet
so yt if ye accused person desire ym to purge themselves
by oath, that they have no malice agt him & then they are
to be sworn tho not examined befor ye accused person & if
ye scandall be proven he is to be censured according to
ye merit of ye offence.

5. That all clerks in sessions presbitrys & synods be
exact in recording not only ye persons names but also ye
scandalls & every step of ye process where need requires,
& verbatim all ye depositions of ye witnesses are to be
recorded being read in yr hearing befor ye judicatories
& in matters of moment if ye witnesses can write lett
them subscribe their depositions.

6. That in every matter of moment and difficultie ye kirk

session to be advice of ye presbitry befor proceeding to
censure.

7. In some scandalls of fornication if one person confess
& ye other deny then ye minr & elders are to deall ser-
iously with him to confess but if he stand in his denyall
yn both are to be brought face to face befor ye session
& if notwithstanding he deny & offer to purge himself by
his oath much pains & circumspection is to be used befor
his oath be taken.

8. Lett presbitrys use the same method in reference to
scandalls brought befor ye.

9. But as to scandalls in minrs where yr is cause cleare
& no informer nor accuser, in that case ye presbitry is to
appoint a visitation in that parish & to inquire anent ye
sd scandall appointing ye sd minr to preach thereat &
accordingly as they find so to judge & censure.

10. But if there be any accuser or informer he or they are
to subscribe his lybell given in against him. Which ye
exbi are to consider whither ye lybell be relevant, yet if 3
or 4 articles conjunction be relevant they would declair
ye same particularly.

11. And ye lybell being found by ye presbitry relevant
if proven, then ye accused is to be summoned personally
and also if present otherways they are to give a warrant
subscribed by ye clerk to ye officer to summon him (and
ye sd officer is to subscribe ye execution of ye summoned

& ye names of ye wittness) against ye nixt meeting of ye presbytry & upon his appearance he is to have a double of his lybell & wittnesses (if he demand it) if he have any-thing to except against them.

12. If he confess then he is to be censured according to ye nature of ye offence if he deny ye wittnesses are to be examined (being sworn in his presence) if ye exceptions given in by him be not found relevant, he is to be judged & censured accordingly what is proven against him by 2 wittnesses.

13. It is to be considered whither one article viz. severall acts of drunkenness being proved by severall wittnesses may not sustain as a probation to prove drunkenness.

14. If ye accused person apprehending ye sentence to goe against him, decline ye judicatory & appeall, unto estate sentention in yt case ye judge is to proceed notwithstanding according to what is proven.

15. And if after sentence he appeall the sentence is to stand, & if he obey it not he is to be proceeded against by further censure.

16. If ye session think a matter difficult they are to refer ye matter to ye prby & if ye prby find a difficulty they are to referr to ye provincially synod & if ye synod find difficulty they are to make a reference to ye Generall Assembly giving alwayes liberty to any party that thinks him-self injured to appeall in due form to ye superior

judiciary.

This above writin attributed to Mr. Matthew Crawford being drawn by him & consid- red by other brethren with him there- unto appointed by ye committee of overtures of ye G. Assem- bly 1690 was transmitted to be considered by my L. Hakron & my L. Abinchall LL of Session & members of ye Assembly; And after they had given in their animadversions all ye papers being considered by some grave experienced brethren therunto also appointed; they left it as now it stands without making further additions or alterations. There- for Mr. Matthew Crawford & Mr. Patrick Simson appointed by ye late synod to certify these papers & to transmitt the effort of their further thoughts upon that subject of ye form of Processes to ye severall prbtys betwixt & ye first of December that being considered by ym these thoughts might be further ripened enent ye same against ye sitting of ye synod in January next did think it fitt- est to lett this paper stand intirely as it is & to offer some additionalis contained in another paper to ye consid- erations of ye severall presbitrys what they may think fitt either to add diminish or alter.

Miscellaneous Church Correspondence, MS.

Additional Overtures Anent Ye Forms of Process - 1690

1. No delations or accusations of scandall must be referred to oath of party but if it be denyed must be duly proved by witnesses else ye process is to sist & ye alledged guilty is to be absolved & yf yr appear and accuser or complainer he must be oblidged eyr to prove his lybell or succumbing is to underly censure if he be found to have accused his neighbor maliciously or consciously also a man alledging promise of marriage on a woman or vice versa to stop their marriage with another must instantly upon his alledgance undertake to prove such a promise if it be denyed or is to be heard further nor ye procedure in marriage upon any such alledgance hindered or delayed.
2. Only in ye case of uncleanness, being a matter of fact usually is not openly comitted & cannot alwayes be cleared when a woman being found or confessing herself guilty imputes it to a man who denyes ye fact, it is at least after all means of clearing ye matter used, if he cannot evidently disprove ye imputations to be brought to his oath of purgation as is sd article 7th of first paper a small decision of ye controversie qch at length cannot be refused if he offer & urge it & is to be taken solemnly before ye congregation but if he shall declare to clear himself by his oath ye judicatory is not premptorly to urge him to it, but withall to declair to h.m yt they cannot otherways

relieve him of that scandal.

3. If there arise a flagrant scandal of uncleanness betwixt a man & woman yther fornication or adultery & both parties deny the fact, in yt case ye judicatory is to consider ye presumptions yrof if yr be none sufficiently relevant to inferre ye fact proved or confessed ye parties are either to be simply assayed or gravely admonished or rebuked as yr shall be cause found from any unbecoming carriage betwixt ym but if ye presumptions be too pregnant as ye scandal cannot oyrwayes be removed ye man is to clear himself by his oath ut supra but if ye presumptions be so very strong as if themselves do inferre ye fact or an equivalent scandal ex. gr. sely by solo lying in soker bed together or ye like in yt case they are not to be admitted to clear ymselves by oath but to be censured as persons of such scandalous behaviour wt ye same degree of censure as if ye fact itself were confessed.

As to Mr. Matthew Crewfords paper consider if yr may not be added. To ye 1 article. That befor summoning ye party delated not only ye matter be found relevant but yt it is a thing which may be proved if it should be denyed or by ye notoriously where ye party maybe convict. 2ly whither ye party delated befor he be summoned be previously spoken to by ye minrs. or elders "as my L Hallowaige suggests" is to be left to ye audience of ye judicatory according as ye quality and temper of ye person & nature of ye case requires & may be most to ye gaining of ye

person & to edifications for to make it always necessary
"as my L. Abernethall observes" might prove to severall
to be inconvenient.

Upon art. 2. It may be considered if it may not be left
to ye discretions of ye session when a party delated for
scandall does not appear after the summons by ye officer
yt he may be summoned out of pulpit to appear before ye
session which has sometimes proved effectual to bring ye
delinquent to obedience & to prevent summoning to ye presby-
try to ye end of ye article to ye end of those words to be
declared contumacious may be added & if they so continue
to be proceeded with to ye lesser or greater excommunication
as ye degree of ye offence & contumacy doth require.

Upon art. 4. It may be considered if ye party duly sum-
moned appear not or decline ye judicatory & ye session or
pryby find cause to examine witnesses they are to be ad-
mitted wth all ye cautions yt were to be used if he were
present as yt ye witnesses be persons of good fame that no
means have been used to suborn them & in yr admission upon
oath they purge themselves of malice or partiall counsell.
Oly anent not receiving of reformers to be witnesses that
is to be understood of presumed malicious or bribed in-
formers or spenders or divulgers of scandalous reports of
things not formerly notticed for it would seem hard to
extend it to everyone who may find it duty to inform church
officers of evident breaches of Gods commands or scandalous
behaviour or may possibly occasionally have spoken of such

things as they have heard or seen which have come to ye ears of church officers. 3ly What is to be done with witnesses not appearing when duly summoned or frightened from appearance by ye party or by their masters & kind lords. Quarta. Upon art. 5. The exactness of recording all ye steps of process & depositions of witnesses ought to be observed with all ye formalitys in processes of moment qch may be lyable to appeal or reference to higher judicatorys to canvass especially in cases of muns. qch require all fair hearing allowed ys to ye utmost and all continue to be observed in ye procedure beside ye matter of scandall their sins. & all being concerned in their processes but if it would seem yt in ordinary sessions processes where the fact at first denyed is admitted to probation & afterwards is confessed or qch goes no further in ye censure then a sessionall or congregationall rebuke all these particularitys are not to be so insisted upon or ye register burnd with them.

Upon art. 7. Relating to sins of uncleanness see ye first addition above.

Upon art. 11. It is to be questioned whither it be needful to ingrosse ye whole lybell in ye body of ye summons used agt any person yea tho a munr. or only a short summons of ye lybell also if ye name of any or all ye witnesses need to be insert in ym "qch might give the accused occasione to endeavor to corrupt ys." it seeming sufficient yt competent tym be allowed him to object if ye granting of more

time be found needfull; qob is not if ye person be not of
suspect faith or fame for it is supposable if he have any
relevant objection to produce he will instantly know it in
knowing ye person & if he cause none presently nor ye jud-
icatory either he needs not be left to search out objections
it is enough if he have no more produce but suspicion or
ignorance that ye witness be perjured by his oath ut supra.
Upon act. 13. It would seem requisite that at least one
fact or two of alleged habitual scandal should be
proved by plurality of witnesses ad idem the single wit-
nesses of diverse oyr facts may have their own additional
weight for ye carty's conviction yt at least seems ye safest.

Additionall Notices out of Abernethy's paper:

1. If defences be proposed which need witnesses for
exculpations to prove them, warrant ought to be granted for
citing such witnesses.
2. Witnesses are not to be examined super inquirenda but
ye precise points of ye libell stuck to or things yt have
a necessary contingency therewith.
3. Adillator proposed after perreant or defence is not to
be admitted.
4. Warrants & summonds in momentous libells are to be
subscribed by ye moderator of ye meeting & ye executions by
him ye excecutes & 2 witness.

Concerning ye manner of proceeding to ye greater excommu-
nication as was think is contained in our old directories.

In ye case of gross & habitual scandals & heresie &

idolatric continued on after all oyr means used to reclaim,
or manifest & oyr wayes incurable contumacie & contra
reclaiming means ye graduall way of procedure used is yt
ye minr of ye parosh befor ye dismission of ye congregation
do publickly intimat ye persons name & scandall or con-
tumacie & solemnly admonish him whither he be present or
absent to repent and give obedience wt ye certification added
of proceeding to excommunication if he do not; qch admoni-
tion if it does not prove effectuell it is to be renewed
a 2^d or 3^d Lordsday in like manner qch being reported to ye
prby & found ineffectuall ye prby is to appoynt ye minr to
declare to ye congregation his continued impenitency & con-
tumacy & so solemnly to hold up his case to God by prayer
yt ye Lord by giving him repentance may yet prevent
excommunicating qm all ye congregation is to be called to joine
yt if ineffectuall is all to be repeated a 2^d & 3^d Lords day
"if presbitrys meet not very infrequently a presbitry day
may interv-e between each of these admonitions & prayers
with a renewed report & appoyntment" & one effort following
ye presbitry doth proceed to conclude yt sentence of excom-
munication qch is to be solemnly pronounced in ye congre-
gations also so far as ye infection may probably spread qch
is to be as ye presbitry or synod finds cause. This hath
been ye way in ordinary graduall procedure but wee find our
church has used a more summary way of excommunication in
heinous & notorious scandalis qch require a more speedy
remedy of off cutting for a testimony against such wickedness

& for preventing ye spreading of ye infection in ye church.
Ye ground of this summary excommunication seems to be in ye
case of ye incestuous Corinthian Cor. 1 5 & of Hymeneus &
Alexander 1 Tim 1 20 & of ye graduall Matt: 18 15 17 &
T.T 3 10

Concerning ye manner of absolution from censure especially
ye greater were leave to ye considerations of presbitrys.

Only it would seem in relaxing from ye greater excommuni-
cation ye party supplicating first if after oyr tryalls
taken of ye sincerity of his professed repentance is by
appoint of ye prby once at least befor ye day of his relax-
ations to appear befor ye congregations in ane humble
posture professing his repentance & calling for ye prayers
of ye congregation (it not being fitting they should be
surprised at his relaxation) ye matter declared by ye cur
to ye congregation & exhortation made to ym sutablely for
preparing ym to receive him qch being reported to ye prby
& yt his relaxation will be found edifying to ye congre-
gation & his continued evidences of repentance with a
suitable walk inviting to it his relaxation may ym be app-
oynted to be performed wt all ye usual solemnitys concluded
wt solemn prayers & thanksgivings where at he is now to be
put but not befor & ye after intimat in all places where the
excommunication was but if any excommunicat man in extreme
be found penitent & desire relaxations it may be done more
summary. Quoritur if any minr present wt him may not
absolve him that he may have access to pray with him &

comfort him at his end qin ye church has always given
large allowance but so as if he recover he shall give
satisfaction publickly.

Concerning stated dayes of appearing for scandal, pillorys
& sackclothe if were good some overtured were thought upon
to be reopened for a Generall Assembly for more uniformitys
sake & for avoiding not a few inconveniences in ye exercise
of church discipline & censure.

APPENDIX C

The Kirk-session Statistics

The following charts give a rough summary of the cases found in the minutes of the fifty Kirk-sessions that were studied, and the figures shown were used to calculate the statistics given in the body of this work. The reason that the sum of the individual cases for each Kirk-session does not always equal the total given is because some cases fit into more than one category, while others do not belong in any of them.

Aberdour Kirk-session (1697-1723)

Total Cases 42	
cursing 3	relapse 4
Sabbath 11	trilapse 1
slander 2	antenuptial 8
fighting 5	scandalous carriage 6
fornication 18	adultery 2

Aberlady Kirk-session (1697-1712)

Total Cases 26	
cursing 2	Fornication 9
Sabbath 4	relapse 1
drunkenness 3	antenuptial 1
slander 2	adultery 1
scandalous carriage 1	irregular carriage 1

Arbuthnott Kirk-session (1690-1711, 1715-1721)

Total Cases 58	
civil 1	charming 1
cursing 2	scandalous carriage 3
Sabbath 12	fornication 24
drunkenness 1	relapse 4
slander 3	antenuptial 1
fighting 7	adultery 1

Auchtermuchty (1697-1713)

civil 1
cursing 7
Sabbath 2
drunkenness 4
slander 2

Total Cases 42
scandalous carriage 5
fornication 20
relapse 3
trilapse 1
antenuptial 8

Auchtermuchty (1701-1721)

cursing 7
Sabbath 12
drunkenness 16
slander 1
fighting 6
chaining 1

Total Cases 73
scandalous carriage 3
fornication 12
relapse 2
antenuptial 5
adultery 3
irregular marriage 3

Banchory-Ternan (1699-1730)

cursing 1
Sabbath 9
drunkenness 2
fighting 5

Total Cases 74
fornication 47
relapse 6
quadrelapse 1
adultery 6

Barony, Glasgow (1691-1718)

cursing 2
Sabbath 10
drunkenness 11
slander 5
fighting 2
scandalous carriage 5

Total Cases 100
fornication 34
relapse 5
trilapse 1
antenuptial 5
adultery 5
relapse 1

Barry (1704-1726, 1729-1730)

cursing 1
Sabbath 7
slander 3
fighting 1

Total Cases 38
fornication 15
antenuptial 6
adultery 2
irregular marriage 1

Borthwick (1690-1714, 1728-1730)

Sabbath 4
drunkenness 3
fighting 1
fornication 18

Total Cases 44
relapse 5
antenuptial 10
irregular marriage 2

Canisbay (1706-1715)

cursing 15
Sabbath 17
drunkenness 2
slander 2
fighting 1
scandalous carriage 3

Total Cases 75
fornication 38
relapse 3
trilapse 1
antenuptial 1
adultery 1

Carnock (1699-1730)

	Total Cases 35
cursing 2	fornication 13
Sabbath 3	relapse 1
drunkenness 1	antenuptial 9
scandalous carriage 4	adultery 1

Carriegen (1690-1700)

	Total Cases 105
civil 4	fighting 13
cursing 9	scandalous carriage 5
Sabbath 7	fornication 23
drunkenness 18	antenuptial 2
slander 14	adultery 1

Carstairs (1694-1707, 1712-1729)

	Total Cases 45
cursing 1	fornication 15
Sabbath 2	relapse 3
drunkenness 6	antenuptial 10
slander 4	adultery 1
fighting 1	

Ceres (1690-1697, 1700-1706, 1710-1712)

	Total Cases 21
cursing 1	relapse 2
Sabbath 7	trilapse 1
drunkenness 1	quadrelapse 1
slander 1	pentelapse 1
fighting 4	antenuptial 10
scandalous carriage 2	adultery 2
fornication 14	

Cleish (1701-1730)

	Total Cases 16
scandalous carriage 1	trilapse 1
fornication 2	antenuptial 4
relapse 2	adultery 1

Cummock, Old (1704-1720)

	Total Cases 44
civil 1	fornication 22
Sabbath 1	relapse 5
drunkenness 2	antenuptial 4
slander 1	adultery 1
fighting 1	irregular marriage 1
scandalous carriage 4	

Currie (1691-1700)

civil 1
cursing 3
Sabbath 10
drunkenness 7
slander 2

Total Cases 42
fighting 3
scandalous carriage 2
fornication 10
antenuptial 1
adultery 2

Dron (1690-1730)

civil 1
Sabbath 3
drunkenness 2
fighting 2
charming 1

Total Cases 36
fornication 14
relapse 2
antenuptial 9
adultery 1
irregular marriage 1

Eastwood (1690-1730)

cursing 1
Sabbath 7
drunkenness 7
slander 5
fighting 1
charming 1

Total Cases 51
scandalous carriage 2
fornication 15
relapse 4
antenuptial 3
irregular marriage 3

Finlay (1690-1699, 1701-1730)

cursing 2
Sabbath 10
drunkenness 1
slander 5
fighting 6
scandalous carriage 2

Total Cases 70
fornication 30
relapse 4
trilepse 1
quadrelapse 1
antenuptial 6
adultery 4

Foveran (1690-1712)

Sabbath 2
fighting 1
charming 1
scandalous carriage 2
fornication 57

Total Cases 99
relapse 18
trilepse 7
quadrelapse 2
antenuptial 9
adultery 6

Gledsmuir (1692-1711)

cursing 5
Sabbath 35
drunkenness 14
slander 8
fighting 8

Total Cases 87
scandalous carriage 2
fornication 13
relapse 4
antenuptial 6
adultery 1

Glanis (1719-1730)

cursing 2
Sabbath 4
drunkenness 3
fighting 2

Total Cases 35
fornication 21
antenuptial 7
adultery 1

Glosserton (1700-1730)

cursing 7
Sabbath 9
drunkenness 4
slander 1
fighting 5
charming 1

Total Cases 60
scandalous carriage 3
fornication 23
relapse 1
trilapse 1
antenuptial 2
adultery 3

Insch (1690-1705, 1720-1730)

Sabbath 3
slander 1
fornication 29

Total Cases 44
relapse 4
antenuptial 3
adultery 3

Inverarity (1714-1730)

cursing 1
Sabbath 4
drunkenness 3
slander 2

Total Cases 28
fornication 8
relapse 2
antenuptial 6

Kelton (1715-1727)

cursing 10
Sabbath 4
drunkenness 2
slander 6
fighting 2

Total Cases 43
scandalous carriage 1
fornication 10
relapse 1
antenuptial 3
adultery 2

Kilconquhar (1690-1730)

civil 1
cursing 1
Sabbath 2
drunkenness 2
slander 1
fighting 1

Total Cases 47
scandalous carriage 3
fornication 25
relapse 2
antenuptial 4
adultery 3
irregular marriage 2

Kilmours (1698-1710)

cursing 9
Sabbath 1
drunkenness 11
slander 5
fighting 3

Total Cases 59
scandalous carriage 5
fornication 13
adultery 3
relapse 1

Kinloch (1696-1717)

civil 1
cursing 9
Sabbath 3
drunkenness 7
slander 1
charming 1

Total Cases 57
scandalous carriage 2
fornication 19
antenuptial 7
adultery 3
fighting 2

Kirkinner (1702-1714)

civil 1
cursing 11
Sabbath 4
drunkenness 8
slander 1

Total Cases 36
scandalous carriage 1
fornication 9
antenuptial 1
adultery 3
charming 1

Leochel-Cushnie (1707-1730)

cursing 2
Sabbath 19
drunkenness 2
slander 1
fighting 6
scandalous carriage 2

Total Cases 51
fornication 12
relapse 1
trilapse 1
antenuptial 11
adultery 3

Longformacus (1690-1711)

Sabbath 3
fighting 1

Total Cases 5
fornication 1
adultery 1

Unnor (1695-1718, 1721-1730)

Sabbath 2
slander 6
fighting 1
scandalous carriage 1

Total Cases 41
fornication 17
relapse 2
antenuptial 3
irregular marriage 2

Mearns (1692-1701, 1720-1722, 1727-1730)

civil 1
cursing 2
Sabbath 7
drunkenness 3
slander 1
fighting 3

Total Cases 65
scandalous carriage 1
fornication 21
relapse 4
trilapse 6
antenuptial 8
adultery 2

Mormuir (1690-1700, 1709-1730)

Sabbath 4
fighting 4
scandalous carriage 2
fornication 19

Total Cases 35
relapse 2
antenuptial 5
irregular marriage 1

Monifieth (1690-1706, 1713-1730)

Total Cases 43

cursing 3	fighting 2
Sabbath 5	fornication 26
drunkenness 2	antenuptial 6
slander 1	adultery 1

Newmachar (1692-1698, 1701-1703, 1705-1706, 1717-1728)

Total Cases 53

cursing 4	fornication 22
Sabbath 8	relapse 6
drunkenness 2	trilapse 1
slander 2	antenuptial 2
fighting 7	adultery 4
scandalous carriage 1	

Newtyle (1696-1710, 1717-1730)

Total Cases 36

Sabbath 6	trilapse 1
drunkenness 2	quadrelapse 1
fighting 3	antenuptial 6
fornication 10	adultery 1
relapse 2	relapse 1

Ordiquhill (1710-1715, 1717-1730)

Total Cases 17

Sabbath 5	relapse 1
fighting 4	antenuptial 1
scandalous carriage 1	adultery 2
fornication 6	

Oyne (1701-1706, 1714-1720)

Total Cases 40

cursing 1	fornication 16
Sabbath 11	relapse 4
drunkenness 3	trilapse 1
fighting 5	antenuptial 1
charming 1	

St. Vigens (1690-1694, 1727-1730)

Total Cases 18

drunkenness 1	trilapse 1
fornication 11	quadrelapse 1
relapse 2	antenuptial 2

Skirling (1701-1712, 1715-1720)

Total Cases 20

cursing 1	fighting 1
Sabbath 4	scandalous carriage 2
drunkenness 3	fornication 2
slander 4	antenuptial 2

Stenton (1698-1713)

cursing 2
Sabbath 13
drunkenness 7
fighting 2
charming 2

Total Cases 46
scandalous carriage 1
fornication 13
relapse 1
antenuptial 4
adultery 1

Straenthro (1709-1723)

cursing 1
Sabbath 2
fighting 2

Total Cases 16
scandalous carriage 1
fornication 7
antenuptial 5

Strichen (1701-1730)

cursing 5
Sabbath 16
drunkenness 5
slander 2
fighting 5
charming 2

Total Cases 60
scandalous carriage 3
fornication 17
relapse 8
trilepsy 1
antenuptial 3

Walston (1703-1730)

civil 1
cursing 3
Sabbath 1
fighting 2

Total Cases 19
charming 1
fornication 9
relapse 1
antenuptial 1

Wemyss (1692-1701)

civil 5
cursing 3
Sabbath 17
drunkenness 8
slander 2
fighting 1

Total Cases 78
charming 1
scandalous carriage 2
fornication 21
relapse 4
antenuptial 7

West Calder (1707-1730)

cursing 2
Sabbath 6
drunkenness 6
slander 5
fighting 1

Total Cases 67
scandalous carriage 2
fornication 33
relapse 1
antenuptial 6
irregular carriage 4

Wilton (1694-1699, 1708-1730)

Sabbath 2
fighting 1
fornication 7
relapse 1

Total Cases 14
trilepsy 1
antenuptial 2
adultery 1

The Presbytery Statistics

Since the overwhelming majority of cases to come before the presbyteries were concerned with sexual scandals (1,517 out of 1,692 cases), we are excluding the other scandals from our statistical tables of the presbytery records.

Aberdeen (1694-1709)

scandalous carriage 5
fornication 20
relapse 2
trilapse 10

quadrelapse 2
adultery 25
trilapse 1
antenuptial 4

Total Cases 70

Arbroath (1704-1730)

fornication 9
relapse 4
trilapse 3

antenuptial 1
adultery 13

Total Cases 29

Biggar (1694-1730)

fornication 4
scandalous carriage 1

adultery 8
relapse 1

Total Cases 20

Brechin (1698-1718)

scandalous carriage 1
fornication 22
relapse 2
trilapse 1

quadrelapse 1
antenuptial 2
adultery 18

Total Cases 48

Caithness (1697-1717)

scandalous carriage 2
fornication 5
trilapse 23
quadrelapse 5
pentelapse 1

antenuptial 2
adultery 65
relapse 4
trilapse 1
quadrelapse 1

Total Cases 113

Channonry (1707-1726)

	Total Cases 29
fornication 2	relapse 1
trilapse 2	trilapse 1
quadrelapse 1	irregular marriage 1
adultery 15	

Cupar (1702-1720)

	Total Cases 44
scandalous carriage 6	adultery 17
fornication 17	irregular marriage 1
trilapse 1	

Dunfermline (1696-1729)

	Total Cases 58
scandalous carriage 11	quadrelapse 2
fornication 29	antenuptial 5
relapse 2	adultery 31
trilapse 5	

Dunkeld (1706-1722)

	Total Cases 76
scandalous carriage 1	antenuptial 1
fornication 9	adultery 42
relapse 1	relapse 3
trilapse 12	trilapse 1
quadrelapse 1	

Duns (1696-1726)

	Total Cases 35
scandalous carriage 7	trilapse 3
fornication 5	adultery 19

Edinburgh (1701-1710)

	Total Cases 171
scandalous carriage 16	quadrelapse 1
fornication 24	antenuptial 2
relapse 4	adultery 107
trilapse 13	

Forfar (1717-1730)

	Total Cases 21
fornication 10	antenuptial 2
relapse 2	adultery 6
quadrelapse 1	

Forres (1708-1727)

	Total Cases 42
scandalous carriage 3	pentelapse 1
fornication 10	antenuptial 4
relapse 1	adultery 13
trilapse 6	relapse 1
quadrelapse 3	trilapse 1

Garioch (1697-1714)

scandalous carriage 6
fornication 17
trilapse 4

Total Cases 41
quadrelapse 3
antenuptial 1
adultery 13

Gaddington (1694-1720)

scandalous carriage 3
fornication 17
relapse 2

Total Cases 63
trilapse 7
antenuptial 4
adultery 25

Hamilton (1690-1719)

scandalous carriage 2
fornication 22
relapse 4
trilapse 8
quadrelapse 3

Total Cases 79
antenuptial 1
adultery 38
relapse 1
irregular marriage 1

Inverary (1691-1702, 1715-1725)

scandalous carriage 2
fornication 10
relapse 3
trilapse 10

Total Cases 85
quadrelapse 3
pentolapse 1
adultery 51
relapse 4

Jedburgh (1692-1721)

scandalous carriage 1
fornication 11
trilapse 4

Total Cases 46
antenuptial 1
adultery 28
relapse 1

Kirkcaldy (1695-1708)

scandalous carriage 11
fornication 12
relapse 3
trilapse 3

Total Cases 55
pentolapse 1
antenuptial 3
adultery 20

Middlebie (1699-1703, 1717-1730)

scandalous carriage 4
fornication 13
relapse 5
trilapse 6

Total Cases 51
quadrelapse 1
antenuptial 2
adultery 19
relapse 1

Paisley (1700-1726)

scandalous carriage 9
fornication 13
relapse 4
trilapse 10

Total Cases 91
antenuptial 1
adultery 41
irregular marriage 1

Penpont (1690-1705, 1714-1716, 1720-1725)

scandalous carriage 5	adultery 17	Total Cases 52
fornication 19	relapse 1	
relapse 3	trilapse 1	
trilapse 2	irregular marriage 1	
antenuptial 3		

Perth (1705-1719)

scandalous carriage 10	quadrelapse 1	Total Cases 70
fornication 28	antenuptial 2	
relapse 3	adultery 17	
trilapse 8		

Stranraer (1703-1719)

fornication 18	adultery 26	Total Cases 47
relapse 1	irregular marriage 1	
trilapse 1		

Wigtown (1696-1709)

scandalous carriage 5	antenuptial 1	Total Cases 41
fornication 15	adultery 15	
trilapse 3		

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Noray, 1702-1730

Ross, 1707-1730

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Presbytery

Aberdeen, 1694-1709
Arbroath, 1704-1730
Biggarr, 1694-1730
Brechin, 1698-1718
Colliestoness, 1697-1717
Channonry, 1706-1726
Cupar, 1702-1720
Dunfermline, 1696-1729
Dunkeld, 1706-1722
Dunn, 1698-1730
Edinburgh, 1701-1711
Forfar, 1717-1730
Forres, 1708-1727
Garloch, 1697-1714
Haddington, 1694-1720
Hamilton, 1690-1719
Inverary, 1691-1702, 1715-1725
Jedburgh, 1692-1721
Kirkcaldy, 1693-1708
Middlebie, 1699-1703, 1717-1721, 1723-1730
Paisley, 1699-1726
Peebont, 1690-1706, 1714-1717, 1719-1725
Perth, 1705-1719
Stranraer, 1702-1720
Wigtown, 1696-1709

Kirk-session

Aberdour, 1697-1723

Aberlady, 1697-1712

Arbuthnot, 1690-1728

Auchtermorran, 1697-1713

Auchtermuchty, 1701-1721

Banchory-Ternan, 1699-1730

Barony, Glasgow, 1691-1718

Barky, 1704-1726, 1729-1730

Borthwick, 1690-1714, 1722-1730

Canisbay, 1706-1715

Carnock, 1699-1730

Carriiden, 1690-1700

Carstairs, 1694-1707, 1712-1729

Ceron, 1690-1697, 1700-1706, 1710-1712

Cleish, 1701-1730

Cummock, Old, 1704-1720

Currie, 1691-1700

Dron, 1690-1730

Eastwood, 1690-1730

Fintray, 1690-1699, 1701-1730

Foveran, 1690-1712

Gladsuir, 1692-1711

Glamis, 1719-1730

Glasserton, 1700-1720

Insch, 1690-1705, 1720-1730

Inverarity, 1714-1730

Kirk-session

Kelton, 1715-1727

Kilconquhar, 1690- 1730

Kilmours, 1698-1710

Kinloch, 1697-1717

Kirkinner, 1702-1714

Loochel-Cughnie, 1707-1714

Longformacus, 1690-1711

Menor, 1695-1718, 1721-1730

Mearns, 1692-1701, 1720-1722, 1727-1730

Menmuir, 1690-1700, 1709-1730

Monfleth, 1690-1706, 1713-1730

Newmachar, 1692-1696, 1701-1703, 1705-1706, 1717-1728

Newtyle, 1696-1710, 1717-1726

Ordiquhill, 1710-1715, 1717-1730

Oyne, 1701-1706, 1714-1720

St. Vigrons, 1690-1694, 1727-1730

Skirling, 1701-1712, 1718-1720

Stenton, 1690-1713

Stracathro, 1709-1723

Strichen, 1701-1730

Walston, 1703-1730

Wemyss, 1692-1701

West Calder, 1707-1730

Wilton, 1694-1699, 1708-1730

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